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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11 Case No.:
GENERAL MOTORS CORP., et al.,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (I) THE AD HOC COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' MOTION FOR AN ORDER CERTIFYING SALE ORDER FOR IMMEDIATE APPEAL TO THE UNITED STATES COURT OF APPEALS, PURSUANT TO 28 U.S.C. § 158(d)(2) OR IN THE ALTERNATIVE FOR A STAY OF THE SALE ORDER, PURSUANT TO FED. R. BANKR. P. 8005, AND (II) MOTION OF THE INDIVIDUAL ACCIDENT LITIGANTS FOR AN ORDER CERTIFYING THE SALE ORDER FOR IMMEDIATE APPEAL TO THE UNITED STATES COURT OF APPEALS PURSUANT TO 28 U.S.C. § 158(d)(2) ON THE ISSUE OF SUCCESSOR LIABILITY

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the "**Committee**") of the above-captioned debtors and debtors-in-possession (the "**Debtors**" or "**GM**"), by and through its undersigned counsel, hereby submits this objection (the "**Objection**") to: (i) the Ad Hoc

Committee of Asbestos Personal Injury Claimants' (the "**Asbestos Committee**") Motion for an Order Certifying Sale Order for Immediate Appeal to the United States Court of Appeals, Pursuant to 28 U.S.C. § 158(d)(2) or in the Alternative for a Stay of the Sale Order, Pursuant to Fed. R. Bankr. P. 8005; and (ii) the Motion of the Individual Accident Litigants (the "**Individual Accident Litigants**") for an Order Certifying the Sale Order for Immediate Appeal to the United States Court of Appeals Pursuant to 28 U.S.C. § 158(d)(2) on the Issue of Successor Liability (collectively, the "**Motions**"). In support of its Objection, the Committee represents as follows:

PRELIMINARY STATEMENT

Following weeks of negotiation, days of discovery, countless hours analyzing the transaction and, finally, three days of hearings, the Committee is satisfied that the proposed sale of substantially all of the Debtors' assets in return for, among other things, the purchaser's assumption of certain liabilities and satisfaction of other claims with the purchaser's equity represents the best possible outcome for the Debtors' estates. The Committee supported the sale in this Court and does so here. The Committee acknowledges that the transaction comes at a cost. Many creditors are "left behind" at the Debtors with a recovery in equity securities that they find inadequate. Certain of those creditors, including certain members of the Committee, have appealed or may appeal the Court's order approving the sale, and the Committee's arguments herein are without prejudice to the arguments taken by Committee members in their individual capacity. Nevertheless, while the Committee does not challenge these claimants' right to appeal, the Committee sees no justification for a stay pending appeal. The Committee also opposes certification for direct appeal to the United States Court of Appeals for the Second Circuit, which increases the risk that a stay will be granted for administrative purposes when the substantive grounds for a stay cannot be met. The deadline for closing the sale transaction is fast

approaching. The Asbestos Committee should not be permitted to jeopardize a resolution of these cases that is supported by the vast majority of the Debtors' creditors. Thus, the Court should deny the Asbestos Committee's request for a stay pending appeal or, at a minimum, require the posting of a multi-billion dollar bond as a condition to granting any stay. The Court should also deny the Individual Accident Litigants' motion for certification to the United States Court of Appeals for the Second Circuit for the reasons set forth below.

BACKGROUND

1. On July 5, 2009, the Court entered an order (the "**Sale Order**") [Dkt. No. 2968] and opinion (the "**Sale Decision**") [Dkt. No. 2967] authorizing the sale (the "**Sale**") of substantially all of the Debtors assets to NGMCO, Inc. ("**New GM**").

2. The Sale Order provides that the assets of GM (in such capacity, "**Old GM**") covered by the Sale are transferred "free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever . . . including rights or claims based on any successor or transferee liability." Sale Order ¶ 7.

3. In addition, the Sale Order enjoins all persons and entities "from asserting against the Purchaser . . . such person's or entities' liens, claims, encumbrances, and other interests including rights or claims based on any successor or transferee liability." Sale Order ¶ 8. Future claims or demands based on exposure to asbestos are enjoined only "to the fullest extent constitutionally permissible." *Id.*

4. The Sale Order provides that it is to be effective as of 12:00 noon EDT on Thursday, July 9, at which time the Debtors and New GM are authorized to close the transaction. Sale Order ¶ 70.

5. On July 6, the Asbestos Committee and the Individual Accident Litigants (the "**Appellants**") each filed notices of appeal (the "**Appeals**") from the Sale Order. [Dkt. Nos. 2970 and 2988.]

6. The Asbestos Committee is comprised of seven personal injury and wrongful death claimants and one attorney. *See* Verified Statement of Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation, Pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure [Dkt. No. 2459].

7. The Individual Accident Litigants are five personal injury/product liability claimants of the Debtors. *See* Verified Statement of the Coleman Law Firm Pursuant to Bankruptcy Rule 2019 [Dkt. No. 1932].

OBJECTION

A. The Sale Order Should Not Be Stayed Pending Appeal

8. In evaluating whether to grant a stay pending appeal, courts consider four factors: (i) whether the movant will suffer irreparable injury absent a stay; (ii) whether a party will suffer substantial injury if a stay is issued; (iii) whether the movant has demonstrated "a substantial possibility, although less than a likelihood, of success" on appeal; and (iv) the public interests that may be affected. *Hirschfeld v. Board of Elections*, 984 F.2d 35, 39 (2d Cir. 1992). The party seeking a stay pending appeal bears the "heavy burden" of proving its entitlement to the stay. *In re Adelphia Commc'ns Corp.*, 333 B.R. 649, 659 (S.D.N.Y. 2005); *accord United States v. Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 44 F.3d 1082, 1084 (2d Cir. 1995). Here, the application of the four factors weighs against the grant of a stay.

i. The Asbestos Committee Has Not Established a Threat of Irreparable Injury

9. While the Asbestos Committee[1] states that a failure to obtain a stay "may well moot the issues for appeal," it is noteworthy that it does not actually contend that failure to obtain a stay will moot its appeal. Instead, it contends that "*the Debtors will argue* that Section 363(m) could essentially prevent [the Sale] from being reversed." Asbestos Committee Motion ¶ 8-9 (emphasis added); *see also id.* ("the appeal will be argued by Debtors to effectively moot the issues").

10. It is debatable whether the likelihood of mootness alone constitutes irreparable harm. Indeed, one of the cases that the Asbestos Claimants rely on for this proposition concedes that it represents the minority position. *See ACC Bondholder Group v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.),* 361 B.R. 337 (S.D.N.Y. 2007) ("A majority of courts have held that a risk of mootness, standing alone, does not constitute irreparable harm."); *c.f Resolution Trust Corp. v. Best Prods. Co. (In re Best Prods. Co.),* 177 B.R. 791, 805 n.12 (S.D.N.Y. 1995) ("Although the threat of mootness alone is not dispositive of the issue of irreparable injury, it is a relevant factor."). Regardless of whether the likelihood of mootness alone constitutes irreparable harm, the Asbestos Committee has not sustained its heavy burden of demonstrating that there is a likelihood of mootness absent a stay. It is not sufficient to simply posit that the Debtors are likely to make this argument.[2]

[1] The Individual Accident Litigants do not seek a stay pending appeal.

[2] Indeed, it is possible that the Asbestos Committee has carefully chosen its words so as to preserve its ability to argue that the sale does ***not*** moot its appeal.

ii. GM's Creditors Will Suffer Substantial Injury if a Stay is Issued

11. The record at the hearing on the Sale established – and this Court explicitly found – that the Debtors have, for some time, managed to continue to operate their businesses only as a result of the financial assistance provided by the United States Treasury ("**Treasury**"). Sale Decision p. 23. Treasury has stated that its continued financing of the Debtors is conditioned on approval of the Sale, and that its financing will cease if the Sale does not close by August 15, 2009. *See* June 1 Hearing Transcript, p. 75-76 (testimony of Harry Wilson); Sale Decision p. 23. There are no other prospective purchasers of the Debtors assets, nor is there any time left to search out alternative purchasers or to develop and confirm a chapter 11 plan as an alternative to a sale. The Debtors would be unable to sustain their operations if they were left to pursue these alternatives without Treasury financing. Accordingly, if the Sale does not close promptly, the Debtors will liquidate.

12. The Committee respectfully refers the Court to the Affidavit of Michael Eisenband, attached as Exhibit A. Mr. Eisenband refers to the Declaration of J. Stephen Worth of Evercore Partners, Dkt. No. 425 (the "**Worth Declaration**"), estimating the total New GM enterprise value at between $63.1 billion and $73.1 billion, and the liquidation value of the Debtors at between $6.5 billion and $9.7 billion. A stay of the transaction risks total value to all GM creditors of the difference between New GM's enterprise value and the Debtors' liquidation value – between $53.4 billion and $66.6 billion.

13. Mr. Eisenband also refers to the Worth Declaration for an estimate of the value of equity securities to be issued to unsecured creditors: $7.4 billion to $9.8 billion. In a liquidation, unsecured creditors would receive nothing. See Declaration of Albert Koch, and the Liquidation Analysis attached thereto as Exhibit B [Dkt. No. 435]. A stay of the transaction thus risks total

value to unsecured creditors of $7.4 billion to $9.8 billion. Thus the second factor weighs heavily against a stay.

iii. The Asbestos Committee Has Not Demonstrated a Substantial Possibility of Success on Appeal

14. As this Court recognized in the Sale Decision, Second Circuit precedent already establishes that section 363 sales of major assets may be effected prior to confirmation of a plan in appropriate circumstances. *See* Sale Decision at 28-29 (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Off. Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141 (2d Cir. 1992); *Consumer News & Bus. Channel P'ship v. Fin. News Network, Inc. (In re Fin. News Network, Inc.)*, 980 F.2d 165 (2d Cir. 1992); *Licensing By Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380 (2d Cir. 1997); *Motorola v. Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452 (2d Cir. 2007)). The Asbestos Committee has not distinguished these cases.

15. As to issues of successor liability, the Asbestos Committee has not cited to any precedent in the Second Circuit that would support its claim to a substantial possibility of success on appeal.

iv. The Public Interest Weighs Against a Stay

16. The stay sought by the Asbestos Committee is against the public interest. The President of the United States has stated that the survival of General Motors is important to the general welfare of the economy, and in consequence has committed billions of dollars to the survival of these debtors. These facts would seem probative of the public interest.

B. In the Event a Stay is Granted, it Should be Conditioned on the Posting of a Substantial Bond

17. Where the grant of a stay risks causing harm to non-moving parties, courts have not hesitated to condition stays on the posting of substantial bonds. *See, e.g., Adelphia,* 361 B.R. at 368-69 (requiring bond of $1.3 billion). Indeed, "if a stay pending appeal is likely to cause harm by diminishing the value of an estate or 'endanger [the non-moving parties'] interest in the ultimate recovery,' and there is no good reason not to require the posting of a bond, then the court should set a bond at or near the full amount of the potential harm to the non-moving parties." *Id.* at 368 (alterations in original). A movant seeking a stay without having to post a bond bears the burden of demonstrating why waiver of the traditional requirement is justified. *Contrarian Funds LLC v. Aretex LLC (In re Westpoint Stevens, Inc.),* No. 06-cv-4128, 2007 WL 1346616, *4 (S.D.N.Y. May 9, 2007). An inability to post a sufficient bond is not justification for waiver. *See Triple Net Investments IX, LP v. DJK Residential LLC (In re DJK Residential LLC),* No. 08-10375, 2008 WL 650389, *5 (S.D.N.Y. Mar. 7, 2008) (noting that the argument that the cost of a bond would be prohibitive "only serves to highlight the substantial risk of dramatic injury to Debtors and other creditors if the Bankruptcy Court's orders were erroneously stayed").

18. Here, the grant of a stay pending appeal threatens to derail the Sale and to force a liquidation of the Debtors. As noted above, liquidation would cost all creditors between $53.4 billion and $66.6 billion, and unsecured creditors in particular $7.4 billion to $9.8 billion. In such circumstances the Court should condition the grant of any stay on the posting of a bond of between **$53.4 billion** and **$66.6 billion.** This represents the Committee's best estimate of the difference between the enterprise value of New GM upon closing of the Sale and the funds

available for distribution to creditors after wind down expenses in a hypothetical liquidation. *See* Affidavit of Michael Eisenband, attached as Exhibit A.

C. The Court Should Deny the Request for Certification to the Second Circuit

19. The Appellants' request for immediate certification of the Appeals to the Second Circuit represents a thinly-disguised attempt to obtain a stay based on administrative procedure rather than substantive grounds. *See* United States Court of Appeals for the Second Circuit Rule 27(b) (clerk's notation that status quo is to be maintained pending a hearing shall have the effect of a stay). Moreover, appellants advance no argument that would justify immediate certification. Their appeal poses neither an issue that is in dispute in this Circuit nor an interest of national importance.

20. By contrast, the reorganization of Chrysler LLC did pose an issue of national importance: whether the Troubled Asset Relief Program authorized the United States Treasury to loan Chrysler billions of dollars (the "**TARP Issue**"). Chrysler's dissenting banks cited the TARP Issue in seeking mandatory removal of the reference to the United States District Court. When United States District Judge Griesa refused to withdraw the reference, he was sufficiently concerned about the TARP Issue to caution the parties against depriving the dissenting banks of their right to appeal.[3] There is no TARP Issue in this case.

21. Therefore, for the reasons stated above, the Committee opposes certifying this appeal to the United States Court of Appeals for the Second Circuit.

[3] *See In re Chrysler LLC*, No. 09-04743, Dkt. No. 1 (S.D.N.Y. 2009) (dissenting banks' contention that the government had violated federal law in providing financing for the sale implicated a "very, very important matter of great public interest") (May 26 Hearing Transcript, p. 49). See Transcript attached as Exhibit B.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Committee respectfully requests that the Court enter an order denying the relief requested in the Motions or, to the extent a stay is granted, conditioning such stay on the posting of a substantial bond, and granting such other and further relief as the Court deems just and proper.

Dated: July 7, 2009
New York, New York

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: s/Thomas Moers Mayer
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Counsel for the Official Committee of Unsecured Creditors

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11 Case No.:
GENERAL MOTORS CORP., et al.,	:	09-50026 (REG)
Debtors.	:	(Jointly Administered)

AFFIDAVIT IN SUPPORT OF THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO (I) THE AD HOC COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' MOTION FOR AN ORDER CERTIFYING SALE ORDER FOR IMMEDIATE APPEALTO THE UNITED STATES COURT OF APPEALS, PURSUANT TO28 U.S.C. § 158(d)(2) OR IN THE ALTERNATIVE FOR A STAY OF THE SALE ORDER, PURSUANT TO FED. R. BANKR. P. 8005, AND (II) MOTION OF THE INDIVIDUAL ACCIDENT LITIGANTS FOR AN ORDER CERTIFYING THE SALE ORDER FOR IMMEDIATE APPEAL TO THE UNITED STATES COURT OF APPEALS PURSUANT TO 28 U.S.C. § 158(d)(2) ON THE ISSUE OF SUCCESSOR LIABILITY

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, Michael Eisenband, being duly sworn, hereby deposes and says:

1. I am a Senior Managing Director with FTI Consulting, Inc. (together with its wholly owned subsidiaries, agents, independent contractors and employees "**FTI**"), a financial advisory services firm with numerous offices throughout the country. I submit this Affidavit on behalf of FTI (the "**Affidavit**") in support of the objection (the "**Objection**") of the Official Committee of Unsecured Creditors (the "**Committee**") to General Motors Corporation, *et al.*, the debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), to (I) The Ad Hoc Committee Of Asbestos Personal Injury Claimants' Motion For An

Order Certifying Sale Order For Immediate Appeal to The United States Court Of Appeals, Pursuant To28 U.S.C. § 158(D)(2) Or In The Alternative For A Stay of The Sale Order, Pursuant To Fed. R. Bankr. P. 8005, And (Ii) Motion Of The Individual Accident Litigants For An Order Certifying The Sale Order For Immediate Appeal To The United States Court Of Appeals Pursuant To 28 U.S.C. § 158(D)(2) On The Issue Of Successor Liability (the "**Motions**"). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. On July 7, 2009, the Court entered an order (the "**Order**") on the Motions stating that parties are to address the size of the bond that would be appropriate if the Court were otherwise inclined to issue a stay. The Order further states that "If, as is possible, parties wish to bring to the Court's attention the loss or lack of loss that would be occasioned by delay (as relevant to the size of the bond or otherwise), supporting facts should be presented by affidavit."

3. In support of this Affidavit, I have reviewed the Declaration of J. Stephen Worth in Support of the Proposed Sale of Debtors' Assets to Vehicle Acquisition Holdings LLC, executed on May 31, 2009 (the "**Worth Declaration**"), excerpted portions of which is attached hereto as Exhibit 1.

4. Treasury's[1] continued financing of the Debtors is conditioned on approval of the Sale by July 10, 2009. *See* July 1 Hearing Transcript p. 74 – 76 (testimony of Harry Wilson). As set forth in the Worth Declaration, the only other alternative open to the Debtors in the event that the 363 transaction does not proceed in the absence of further financing being available will be liquidation. *See* paragraph 24 of the Worth Declaration. Therefore, the loss that would be occasioned by delay of the 363 transaction would approximate the difference between the enterprise

1 Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Objection.

value of New GM upon closing of the proposed 363 transaction and the funds available for distribution to creditors, after wind down expenses, in a hypothetical liquidation.

5. As set forth in the Worth Declaration, the total New GM enterprise value after completion of the proposed 363 transaction is between $63.1 billion and $73.1 billion. *See* page 16 of Exhibit F to the Worth Declaration. As set forth in the Worth Declaration, the estimated net proceeds available for distribution to all creditors under a hypothetical liquidation scenario, assuming the 363 transaction did not occur, and after wind down expenses, is between $6.5 billion and $9.7 billion. *See* page 6 of Exhibit D to the Worth Declaration.

6. Moreover, as set forth in the Worth Declaration, the total imputed value of the equity and warrants in New GM that is being reserved for distribution to unsecured creditors of the Debtors' estate remaining after the 363 transaction is between $7.4 billion and $9.8 billion. *See* page 14 of Exhibit F to the Worth Declaration. As set forth in the Worth Declaration, under a hypothetical liquidation scenario, after paying wind down costs, there would be insufficient funds for distribution to general unsecured creditors. *See* page 6 of Exhibit D to the Worth Declaration. Moreover, the magnitude of loss is that much greater for those unsecured creditors whose claims are scheduled to be assumed by New GM pursuant to the 363 transaction.

7. Therefore, the estimated value loss to the estate from delay of timely approval of the 363 transaction is between $53.4 billion and $66.6 billion. The estimated value loss to general unsecured creditors from delay of the 363 transaction is between $7.4 billion and $9.8 billion. For the reasons set forth in the Objection, the Committee requests that the Court enter an order denying the relief requested in the Motions. However, if the Court were so inclined to grant a stay, the

Committee submits that the Court should require a bond of between $53.4 billion and $66.6 billion, or at a minimum between $7.4 billion and $9.8 billion.

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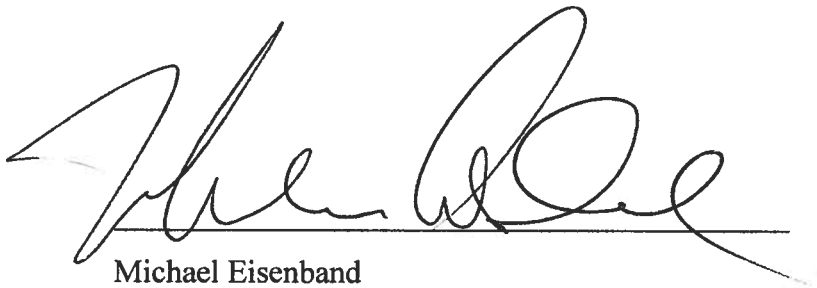
Dated this 7th day of July 2009.



Michael Eisenband

SUBSCRIBED AND SWORN TO BEFORE ME this 7th day of July 2009.

Linda Pearson

Notary Public

My Commission Expires:

LINDA J. PEARSON
NOTARY PUBLIC, STATE OF NEW YORK
No. 01PE6110512
QUALIFIED IN QUEENS COUNTY
MY COMMISSION EXPIRES MAY 24, 2012

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
General Motors Corporation, *et al.,*	:	Case No. _____
	:	(Jointly Administered)
Debtors.	:	

DECLARATION OF J. STEPHEN WORTH
IN SUPPORT OF THE
PROPOSED SALE OF DEBTORS' ASSETS TO VEHICLE ACQUISITION HOLDINGS LLC

I, J. Stephen Worth, make this Declaration under 28 U.S.C. § 1746 and state:

1. I am a Managing Director with Evercore Group L.L.C. (together with its wholly-owned subsidiaries, agents, independent contractors and employees, "Evercore"), financial advisor to General Motors Corporation and the other above-captioned debtors and debtors in possession (collectively the "Debtors" and, together with their non-debtor affiliates, "GM"). I submit this Declaration in support of the proposed sale and transfer of substantially all of the Debtors' assets (the "Purchased Assets") to a newly formed entity ("Vehicle Acquisition Holdings LLC"), all as more fully described in the Motion (as defined below).[1]

[1] Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Debtors' Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Pursuant to the Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser, Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Other Relief; and (II) Schedule Sale Approval Hearing (the "Motion").

PROPOSED 363 SALE

20. GM has analyzed a range of alternatives to raise liquidity, reduce its financial leverage and achieve its operational objectives, including the use of the U.S. Bankruptcy Code. It has been GM's preferred objective to restructure its business out-of-court, based on a concern that revenue would decline rapidly and confidence in GM's brands would be permanently impaired in a bankruptcy. As a result, to the extent bankruptcy strategies have been considered, the focus has been on achieving a very rapid exit of GM's operating businesses from bankruptcy.

21. As part of its engagement, the Engagement Team (as defined below) worked closely with GM in the development of its liquidity preservation plan and on its attempts to raise new capital in July-September of 2008, advised GM on a potential combination with Chrysler in the fall of 2008, assisted in the development of the Viability Plan submitted to the U.S. Treasury on February 17, 2009 (in particular Appendix J and Appendix L to that submission), reviewed and analyzed the update to the operating plan developed by GM from April through May of 2009, as well as the scenarios for a new, post-363 Sale GM ("NewCo") developed in contemplation of the 363 Sale. In addition, we have reviewed and relied upon the Liquidation Analysis of GM prepared by AlixPartners LLP (the "Liquidation Analysis"), a copy of which is attached hereto as Exhibit D, for purposes of the Opinion.

22. Timing was an important consideration in the decision to pursue the 363 Sale, notably the combination of: (a) the challenge in reaching agreement with labor unions on restructuring of legacy costs and achieving competitive wages and benefits, (b) the time requirements for a public solicitation for a pre-packaged bankruptcy, (c) the June 1, 2009 maturity of the Series D Convertible Notes, (d) the likelihood that continued uncertainty over the

future of GM would continue to negatively impact business performance, and (e) the deadlines established by the U. S. Treasury as GM's largest lender.

23. The Debtors also have filed the Declaration of William C. Repko in Support of Debtors' Proposed Debtor in Possession Financing Facility, a copy of which (without exhibits) is attached hereto as Exhibit E.

24. The availability of financing, or lack thereof, is a principal factor in GM's decision to pursue the 363 Sale. The combination of (a) the fact that no bona fide potential buyers other than Vehicle Acquisition Holdings LLC have expressed an interest in acquiring GM, (b) that there is no alternative source to finance a restructuring for GM, either in or out of bankruptcy, and (c) that the DIP Financing proposal offered by the U.S. Treasury and Export Development Canada is conditioned on the 363 Sale, support the conclusion that the Company is faced with a choice between the 363 Sale or the immediate liquidation of the business. Evercore worked closely with GM to review its options at each stage of the process.

25. The terms and conditions of the proposed 363 Sale are set forth in the Master Sale and Purchase Agreement and are described in the Motion.

26. Financial projections for NewCo are attached as an appendix to the Fairness Opinion Presentation to the Company's Board of Directors and included in Exhibit F. The projections were developed by GM to reflect, among other things, the effects of their operational and financial restructuring plan as well as the impact of the bankruptcy filing in the context of the 363 Sale. As described in Exhibit F, the financial projections were utilized by Evercore for purposes of establishing a range of values for the common equity of NewCo.

Exhibit D:

Liquidation Analysis Prepared by AlixPartners

Executive Summary

General Motors Corporation
Liquidation Analysis
Consolidated Debtors
As of June 1, 2009

(In USD Billions)

	Hypothetical Liquidation Value		
	Low	High	Midpoint
ASSETS			
Cash & Cash Equivalents	$ 2.0	$ 2.0	$ 2.0
Accounts Receivable	0.5	0.6	0.5
Inventory	0.6	0.9	0.8
Property, Plant & Equipment	1.3	2.1	1.7
Other Assets	0.2	0.4	0.3
Equity in Subsidiaries	3.5	4.5	4.0
Intellectual Property	1.0	1.2	1.1
Total Proceeds From Assets	**$ 9.1**	**$ 11.7**	**$ 10.4**
Costs Associated With Liquidation			
Chapter 7 Trustee Fees	$ 0.1	$ 0.1	$ 0.1
Other Professional Fees	0.1	0.1	0.1
Wind Down Costs	2.5	1.8	2.2
Total	$ 2.7	$ 2.0	$ 2.4
Estimated Net Proceeds Available for Distribution	**$ 6.5**	**$ 9.7**	**$ 8.1**

	Est. Claim	Hypothetical Recovery Value		
		Low	High	Midpoint
RECOVERIES				
Revolving Credit Facility	$ 3.9	$ 2.7	$ 3.0	$ 2.8
Recovery Rate		*70.2%*	*77.1%*	*73.7%*
Term Loan	$ 1.5	$ 0.4	$ 0.9	$ 0.6
Recovery Rate		*26.3%*	*60.8%*	*43.6%*
First U.S. Treasury Facility	$ 20.5	$ 2.6	$ 4.9	$ 3.7
Recovery Rate		*12.7%*	*23.7%*	*18.2%*
Administrative and Priority Claims	$ 2.8	$ 0.7	$ 1.0	$ 0.9
Recovery Rate		*26.8%*	*34.1%*	*30.5%*
General Unsecured Claims	**$ 116.5**	**$ -**	**$ -**	**$ -**
Recovery Rate		*0.0%*	*0.0%*	*0.0%*

Asset Value

- The value of the assets was based on a review of the March 31, 2009 balance sheet, discussions with management and other professionals.
- Equity in Subsidiaries reflects the estimated value of both foreign and domestic subsidiaries. The value of the subsidiaries was determined on a distressed going concern basis for subsidiaries considered to be solvent stand alone businesses.

Costs Associated with Liquidation

- Chapter 7 and Other Professional Fees were determined as a percentage of recovery value.
- Wind Down Costs reflect the estimated costs to secure, maintain and sell the estates assets.

Secured Debt Recoveries

- Secured debt recoveries are based on the recovery value of the collateral for each facility.
- The First US Treasury Facility claim is based on the current balance of $19.4 billion, plus the obligations under the Warrant Promissory Note.

Administrative and Priority Claims

- The estimated $2.8 billion of Administrative and Priority claims is primarily comprised of employee claims and s503(b)(9) claims. The Debtors and their advisors believe these estimates are conservative, and could be much higher, in the event of an actual Chapter 7 liquidation.

General Unsecured Claims

- The Liquidation Analysis assumes the General Unsecured Claims are equal to those presented on the March 31, 2009 balance sheet. Certain contingent General Unsecured Claims that would likely occur in a hypothetical Chapter 7 Liquidation such as lease/contract rejection claims, additional pension termination claims or other litigation claims are not reflected on the March 31, 2009 balance sheet. If an estimate of these contingent claims were to be included it is likely the estimated General Unsecured Claim amount would increase.

Exhibit F:

Materials Relating to Fairness Opinion Presentation to GM Board of Directors

NewCo Equity and Warrants

($ in billions)

Imputed Value of Equity and Warrants in NewCo						
	% NewCo Ownership	Strike Price	Term	NewCo Value		
Purchaser Warrant A	7.5%	$15.0	7 years	$2.1	-	$2.9
Purchaser Warrant B	7.5%	$30.0	10 years	1.5	-	2.1
Total Value from Warrants	**15.0%**			**$3.6**	**-**	**$5.0**
Value of 10% in NewCo	**10.0%**	**NA**	**NA**	**$3.8**		**$4.8**
Total Equity and Warrants in NewCo				**$7.4**	**-**	**$9.8**

Capitalization of NewCo

($ in billions)

- NewCo's capital structure is expected to be substantially improved as a result of:
  - The Purchaser's credit bid of $49bn in indebtedness in exchange for NewCo equity and $2.5bn of Preferred Stock
  - The elimination of $27bn of unsecured debt
  - The decrease of $18bn in the VEBA obligation in exchange for NewCo equity and $6.5bn of Preferred Stock
  - The reduction in projected Canadian pension contributions, CAW OPEB obligation and Other OPEB obligations
- The Transaction achieves the strategic objective of providing sufficient liquidity to execute the operating plan and significantly deleverage the capital structure

Pro-Forma Enterprise Value of NewCo

NewCo Equity Value	**$38.0**	**-**	**$48.0**
Excess Cash		(12.3)	
Government Debt		8.0	
Other Debt		6.1	
PV of UAW VEBA Obligations		3.7	
PV of CAW VEBA Obligations		0.7	
PV of Expected Future Pension Contributions		9.9	
Preferred		9.0	
Total NewCo Enterprise Value	**$63.1**	**-**	**$73.1**

Credit Statistics	**2010**	**2011**	**2012**
Net Debt & Pfd. / EBITDA	2.5x	1.2x	0.6x
Total Debt & Pfd. / EBITDA	3.8	2.2	1.9
EBITDA / Interest	3.6	6.6	7.5
EBITDA / (Interest + Capex)	1.0	1.5	1.8

Exhibit B

95QSCHRYSLER
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

CHRYSLER LLC, et al.,

Plaintiffs,

v. 09 Civ. 4743

INDIANA STATE TEACHERS' RETIREMENT FUND, et al.,

Defendants.

----------x

May 26, 2009
11:45 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

APPEARANCES

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BY: THOMAS F. CULLEN, JR.

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- - -

(Case called)

THE COURT: What I would like to start by saying is that you can assume I read the briefs but that does not in any way eliminate the need for discussion here. I think we all know that when the issues are complicated oral argument is very important. However, I would like to start by asking some rudimentary questions. The answer to these questions are probably somewhere in the papers but I don't say that I read all the papers.

Let's start with the bonds. I think the way that they have been referred to, in some submissions at least, is priority bonds.

What is the way you would like to have them named?

MR. KURTZ: Senior secured lenders, your Honor.

THE COURT: They are bonds, aren't they?

MR. KURTZ: They are loans, your Honor.

THE COURT: They are loans?

MR. KURTZ: Correct.

THE COURT: Senior secured loans, right?

MR. KURTZ: Correct.

THE COURT: Alright. And they were issued in what, late 2007?

MR. KURTZ: Correct.

THE COURT: They mature when according to their terms?

MR. KURTZ: I think their original term would have

taken them from 2012 but by reason of filing they are today.
THE COURT: According to the original terms of the.
MR. KURTZ: We are confirming it's 2012, your Honor.
Just one moment.
Perhaps counsel to the administrative agent for the facility can supply us with that date.
MR. PANTALEO: Your Honor, Peter Pantaleo, Simpson Thacher.
I am not positive. I think it's 2012, your Honor.
THE COURT: That can be confirmed. I would be interested.
How about interest? Was interest to be paid periodically? What were the terms about the interest?
MR. PANTALEO: The term --
THE COURT: I looked in the original agreement. It was too difficult for me. I couldn't find what the interest was.
MR. PANTALEO: It varies. It could be either 3 percent above the LIBOR rate -- well, 3 percent above base rate or 4 percent in the 4 percent above LIBOR.
THE COURT: Is interest to be paid periodically?
MR. PANTALEO: On a quarterly basis.
THE COURT: Quarterly interest.
MR. PANTALEO: Maturity is 2013.
MR. KURTZ: June 15, 2013.

THE COURT: Quarterly interest.
Thank you very much.
Were the interest payments being made up until the time of the bankruptcy or or not?
MR. KURTZ: My understanding is they were.
MR. PANTALEO: Yes, your Honor. There were no defaults up to the bankruptcy. Bankruptcy was the first default.
THE COURT: If you can answer this: Under the terms of the Section 363 sale, what happens to these loans? Do they get wiped out? Do they survive? I know the material about the $2 billion but if I can just get a description in quite precise terms.
MR. KURTZ: The collateral that supports the secured loans will be transferred to a new Chrysler, and $2 billion will be supplied to the lenders. There will be a $5 billion deficiency which will receive no payout whatsoever but will exist as an unsecured claim. At the same time there will be distribution to other unsecured creditors.
THE COURT: You are going beyond my question.
You say transfer to a new Chrysler?
MR. KURTZ: Correct.
THE COURT: Let me make a note.
And the $2 billion is --
MR. KURTZ: Being made available to the estate in old

Chrysler to pay out to the senior secured lenders.

THE COURT: To the estate for what?

MR. KURTZ: For distribution to the senior secured lenders.

THE COURT: Now, the total amount of senior secured loans we refer to it as roughly $7 billion?

MR. KURTZ: Correct.

THE COURT: And do the loans still remain outstanding or are they cancelled or what happens to them?

MR. KURTZ: They remain outstanding and the senior secured lenders have a $5 billion deficiency claim.

THE COURT: But the security is gone, right?

MR. KURTZ: Correct, all of it.

MR. PANTALEO: Your Honor, that is not correct.

THE COURT: I am going to come to you. One at a time.

MR. KURTZ: All or substantially all the security would be gone. Anything left behind we understand results in further distribution to the senior secured lenders.

THE COURT: But just as a technical matter is it still true that the assets of Chrysler would be security for that 5 billion, just as a technical matter?

MR. KURTZ: The facility has a security interest in substantially all the assets of Chrysler but all of those assets are being transferred to new Chrysler. So there will be nothing left in old Chrysler to pay out the senior secured

lenders but the $2 billion.

THE COURT: And what is transferred to new Chrysler will not be security for the senior secured loans, is that right?

MR. KURTZ: That is correct. That is being released.

THE COURT: Okay.

THE COURT: Now, will interest still be due?

MR. KURTZ: Due? Your Honor, everything will be due. None of it will be paid.

THE COURT: Okay.

Now, you are Mr. --

MR. KURTZ: I am Mr. Kurtz, Glenn Kurtz of White & Case.

THE COURT: I know.

I am going to turn to this gentleman, Mr. --

MR. PANTALEO: Mr. Pantaleo from Simpson Thacher, your Honor. My client is J.P. Morgan.

THE COURT: What do you say on the questions I asked?

MR. PANTALEO: Your Honor, substantially all of our collateral has been sold to new Chrysler and in exchange for that Mr. Kurtz is correct, the agent is to receive the $2 billion in cash for distribution to the lenders but not all of the collateral is being transferred. Some of it, including about 8 plants, are left behind. Those remain subject to our liens and remain subject to the balance of our claim of $5

billion.

THE COURT: So there are 8 plants left behind?

MR. PANTALEO: Plus other miscellaneous assets.

THE COURT: In other words, some assets.

MR. PANTALEO: Yes, some, the value of which is highly uncertain at this point.

THE COURT: Just a minute.

Is there any plan to pay off the remaining 5 billion?

Is there any plan to pay interest on the remaining 5 billion?

MR. PANTALEO: There isn't yet, your Honor. But that will be the subject of the balance of the Chrysler bankruptcy case is to address that liability plus the other liabilities that remain unpaid at Chrysler. They don't belong to our client but belong to other creditors.

THE COURT: Right now there is no plan.

MR. PANTALEO: Right now there is no plan.

MR. KURTZ: Your Honor, perhaps I can clarify. We have been told that the assets that are left behind are valueless; that there will be no additional distribution, and everybody is proceeding on the basis that there will be a $2 billion payout on a $7 billion obligation and that is all there will be, and the reason that those plants were left behind was because they were of no value to new Chrysler on an ongoing basis.

I don't want there to be some misunderstanding that there is to be additional value even approaching 5 billion. There will be zero further distributions based on any assets left behind simply because new Chrysler doesn't want those assets.

THE COURT: Okay.

MR. CULLEN: Your Honor, if I may, Thomas Cullen of Jones Day representing Chrysler.

That is not true. It's not true that those assets are valueless. There will be a wind-down.

THE COURT: What are they worth?

MR. CULLEN: We don't know as of yet, your Honor. We have a liquidation analysis that puts some numbers on it.

THE COURT: What does the analysis say?

MR. CULLEN: The analysis says they are somewhere in the range of above $1 billion for those assets but at the top end of the range, but we will be selling 8 plants. Some of the plants have recently received various investments. But the idea that they are valueless is not quite true. What value they will achieve --

THE COURT: They are not worth 5 billion.

MR. CULLEN: No, by no means.

THE COURT: Let's go on with the argument that you wish to present and we will start with you, Mr. Kurtz. You are the maker of the motion.

MR. KURTZ: Thank you, your Honor.

To start with something somewhat administrative, there are two motions before your Honor today, a motion to withdraw the reference and a motion for a stay. The reason there are two motions is really a matter of timing before the court. We believe that the reference must be withdrawn and if the court resolves that motion, then there is no reason to address the stay. The concern we have --

THE COURT: How about the motion for the trustee and the examiner?

MR. KURTZ: That is an interesting point because that has to be resolved before the sales motion is heard by the Bankruptcy Court and we have asked to have that resolved barring a motion -- I am sorry, barring a withdrawal of the reference before we have the 363 hearing or at the same time. We have not gotten a agreement on that and, in fact, we have a conference with Judge Gonzalez at 4 p.m. today to find out even whether the sales motion will proceed without having the trustee motion which will moot it.

There is a concern if that does not get heard by that court or barring success in our motion in another court it will be rendered moot.

THE COURT: The way I understand your motion is that you have filed the motion for the trustee and the examiner in the Bankruptcy Court but you ask this court to decide that

motion as a consequence of your basic motion to withdraw the reference.

MR. KURTZ: That is correct, Judge.

THE COURT: Okay.

Go ahead.

MR. KURTZ: In any case if your Honor needs more time to resolve this motion that is why we have the stay application here. It's for you to find sufficient time. It's not for any other reason and so I am not going to focus on that in today's argument unless your Honor has questions on it. I am going to move instead to the motion to withdraw.

This case presents extraordinary and precedent-setting circumstances that will have broad and significant implications on the U.S. automotive industry and the manner in which the federal government attempts to address the current financial crisis. The opposition here tries to avoid these far-reaching issues by focusing on bankruptcy law but obviously we are not here about bankruptcy law.

What is extraordinary is not that the Treasury Department is reorganizing Chrysler without a plan of reorganization and the attendant protections, and that the reorganization violates fundamental principles of absolute priority, though those issues are also very significant. What is extraordinary here, what is precedent setting here is that the federal government without authority is orchestrating and

funding this plan in violation of the Constitution and TARP.

Those are important federal questions that must be decided by the district court. The test for mandatory withdrawal is simply where the "resolution" of a proceeding requires consideration of both Title XI and other laws of the United States. Where the court would have to engage in an interpretation of the significant issue of federal law withdrawal of the reference required is mandatory. The standard is more easily met where the issue is one of first impression and there is no dispute that we have a very important constitutional and federal issue here of first impression.

The government itself has characterized this as an extraordinary and unprecedented case. The federal question we raise here rise under the TARP, which was enacted under the Emergency Economic Stabilization Act, or EESA. The first issue is whether the Executive Branch has any authority whatsoever under TARP to spend TARP funds to purchase the collateral of Chrysler --

THE COURT: Can you talk a little slower?

MR. KURTZ: The first issue is whether the Executive Branch has any authority whatsoever under TARP to spend TARP funds to purchase the collateral of Chrysler securing the Indiana pensioners loans.

The second issue is whether the Treasury Department

has exceeded its authority under TARP and effectively taking over Chrysler, and now there is a third issue of first impression.

The opposition's primary objection here questions the standing of the Indiana pensioners to raise the TARP issues. None of those three issues has ever been considered much less decided before by any court.

THE COURT: I am going to cut through something.

I am going to tell you right now that in my view the Indiana funds or Indiana pensioners have standing to make their motions and let's proceed with other matters.

MR. KURTZ: I will do that, your Honor. I appreciate the clarification.

Let me, then, move really to what gets decided and what doesn't get decided on a motion to withdraw the reference, and what gets decided is simply whether there is a significant federal issue that has been raised. What does not get decided is that actual issue.

The underlying objection to the sales motion gets decided only after there has been a withdrawal of the reference. So at this point in the proceedings on our motion the inquiry is really whether we have raised a substantial federal question, not whether we are right. And although that actually ends the inquiry for purposes of this motion I do want to briefly address the merits to show that we raise a very

substantial issue.

The first issue, as I noted, is the unauthorized use of TARP. TARP makes funds available to purchase troubled assets from "financial institutions". Without burdening the record by simply repeating our brief, it's probably enough just to note the obvious fact that Chrysler is not a financial institution. It's a car company. Chrysler doesn't satisfy any common understanding of the term financial institution. It doesn't fall even near any of the listed terms in the TARP statute itself making up banks, savings associations, insurance companies. It doesn't fall near the definition of other federal law, such as the Bank Holding Company Act.

The Treasury Secretary himself specifically testified before Congress that TARP is not available for automakers. The house passed an automaker bailout bill on December 10, 2008 and that bill failed in the Senate. So Congress has made absolutely clear that it would not authorize Treasury to spend money on an automotive bailout. Even a determination by treasury to use TARP here was based on a premise that Chrysler provides credit; that Chrysler Financial, however, not any of the debtors, and Chrysler Financial is not a recipient of the TARP funds.

THE COURT: Well, the federal government made a loan to Chrysler of $4 billion in what was it, early 2009? When was that?

MR. CULLEN: January 2nd, your Honor.
THE COURT: January 2nd, okay, $4 billion. And the federal government is proposing to make debtor-in-possession financing available in the Chapter XI. Cull.
MR. KURTZ: That is correct.
MR. CULLEN: They have provided such debtor-in-possession financing.
THE COURT: Along with the Canadian government?
MR. CULLEN: Along with the Canadian government. There was a motion on that decided --
THE COURT: Has the money been paid?
MR. CULLEN: Some of the money has been used.
THE COURT: But January 2 was the original loan.
MR. CULLEN: Yes.
MR. KURTZ: Correct.
We are told that that money is gone, Judge; that there is no recovery on it. That money was used to burn and it's gone. And it's junior to the secured loan here.
THE COURT: Look, just to save you repeating, I think there is a substantial issue about the interpretation of that statute, EESA.
MR. KURTZ: The emergency Economic Stabilization Act and TARP.
THE COURT: EESA, which established TARP, and that has not yet been decided. It certainly hasn't been decided by the

Bankruptcy Court and it's not going to be decided by me today, but there is an issue.

Is that enough to require a withdrawal of reference under section 157?

MR. KURTZ: It is, your Honor. And there are only two defenses. Mandatory withdrawal applies whenever there is a significant interpretation of federal law. It's mandatory. Having identified the significant issue, having identified it as a question of first impression my burden is discharged. There are really only two objections that I could cull from the numerous oppositions that were put in. The first was the defense that somehow the resolution of the TARP issue would not be essential and therefore it wasn't something that had to be reviewed by the district court. Essential means that the resolution of the issue could impact the decision on the underlying motion, here the sales motion, the trustee motion. The opposition offers a rather wishful thinking that the issue does not have to be resolved at all.

Frankly, it's difficult for us to even understand that conclusory assertion. The Indiana pensioners have lodged an objection based on the constitutional violations and the violations of TARP. That.objection needs to be heard whether by this court, which is the correct court, or by the Bankruptcy Court.

THE COURT: I don't disagree that it's important. The

Treasury Department says in its brief it is clear that in lending to Chrysler and in proposing to own the assets of new Chrysler, the Treasury Department relied in substantial part on the authority granted to it by EESA, which established TARP. That is the Treasury Department that says that, so I don't really buy the idea, which certainly has been voiced by other parties, that it is irrelevant.

My problem is this: That I think you are a little too absolutist about you have a burden to show the necessity of interpreting a federal statute and maybe a constitutional provision, and that is it. It seems to me the case law takes a less absolutist approach. For instance, timing. There are parties who say that you are too late. So I ask you why is it that the motion to withdraw the reference was made, and I think the date of the making of the motion was May 20, wasn't it?

MR. KURTZ: It was, your Honor.

THE COURT: Okay.

MR. KURTZ: It was either the evening of the 19th or the morning of the 20th, I am not sure.

THE COURT: Let's say the 20th.

MR. KURTZ: Okay.

THE COURT: I think I heard about it on the 20th.

MR. KURTZ: Very well, your Honor.

THE COURT: Now, look, the Chapter XI proceeding was filed April 30. Why did it take 3 weeks after a lot had gone

on in the Bankruptcy Court before the Indiana funds filed a motion to withdraw the reference?

MR. KURTZ: Thank you, Judge.

That is the second objection that was raised that I did intend to respond to and there are four responses, Judge. The first is that the Indiana pensioners received formal notice of the proceedings of the sale hearing on May 18.

THE COURT: Formal notice doesn't do much for me.

MR. KURTZ: But, your Honor, then let me move to an another thing.

The factual predicate that this has to happen, and this has to happen by tomorrow, is just wrong. The closing documents require a closing by July 15 so there is more than ample time for the correct court to resolve the substantial constitutional and federal issue here. A delay of a week or more is utterly irrelevant, we submit.

Two, it is the government that dictated this timing and this is really a problem here. The government chose to put Chrysler in bankruptcy at exactly at this time and to announce publicly that they would blow through this process in 30 to 60 days, which is absolutely unprecedented for a case of even a fraction of the size and complexity of this one. And, in short, the plan was to run everyone over, and discovery, which we are first receiving over the weekend and trying to digest, is confirming that. This discovery showed the debtors advised

against the schedule here. In fact, --

THE COURT: You are reading things and it doesn't help me. I will understand you better if you just talk to me.

MR. KURTZ: Your Honor, the debtors themselves sent an e-mail to the government just four days before the bankruptcy was commenced complaining about the government's imposed schedule of trying to blow through a sales hearing at that time on June 15, which is considerably later than what they ultimately went with. And the debtor's lead counsel told the government that this "was a big mistake," that it would require that they "stuff a judge," that they "would risk credibility," and that ended with "the impossible is getting to be too hard."

So the government itself has created a schedule that it is attempting to impose in order to blow through objections, to run people over. The only milestone that they rely on is their own right to walk away from the deal on July 15, which is still quite a ways away.

THE COURT: What is the July 15 date?

MR. KURTZ: On June 15 if you don't close you can give a notice of default and then there is a 30-day extension. So the first time the government could actually walk away from a transaction is on July 15.

THE COURT: This is under the proposed terms?

MR. KURTZ: In the 363 sale.

THE COURT: Say that again.

MR. KURTZ: The government has set June 15 as the date for compliance with conditions.

THE COURT: June 15.

MR. KURTZ: That is the June 15 date that has been included in the opposition papers. But --

THE COURT: Just a minute.

And what about July 15?

MR. KURTZ: And if there is a failure to satisfy conditions on June 15, then there is a 30-day extension which brings you to July 15.

THE COURT: An automatic 30 days?

MR. KURTZ: Automatic on the request of a party.

THE COURT: Say it again?

MR. KURTZ: Automatic on the request of a party.

Putting aside the fact that there is more than ample opportunity to have a hearing here and putting aside the fact that the debtors themselves --

THE COURT: You didn't finally answer my question.

I asked why -- and obviously it's of interest the timing you have talked about. But the question is why wasn't this petition for motion for withdrawal filed earlier before a fair amount of work had been done by the bankruptcy judge and objections had been heard and hearing about the vetting process had gone on. A lot of work had been done.

MR. KURTZ: The Indiana pensioners acted promptly as a

state public pension fund as fast as they could act after learning of these problems.

THE COURT: When did they learn of these problems?

MR. KURTZ: They didn't receive formal notice --

THE COURT: I am not asking about formal notice. Come on.

MR. KURTZ: I don't have the answer of the date they learned. I believe it was the week leading up to the 15th.

THE COURT: Weren't you in the Bankruptcy Court?

MR. KURTZ: Not for this client, Judge.

THE COURT: For similarly situated lenders?

MR. KURTZ: Yes, I was in for an ad hoc group of bondholders that did not include the Indiana pensioners.

THE COURT: But they were holders of the same loans, weren't they?

MR. KURTZ: They were, Judge.

THE COURT: And you were doing what?

MR. KURTZ: We were raising objections to the sales procedure motion and the DIP financing motion.

THE COURT: The same kind of thing you are raising now, right?

MR. KURTZ: We did not raise the TARP issues. We had objections to how this was being pushed through. We had objections under bankruptcy law as to violations of the absolute priority and othere matters which the judge

effectively said would be addressed in a sales motion, but we did not raise the TARP issue before the bankruptcy judge.

THE COURT: Let me just say this to you: I am very slow to criticize a party or a lawyer on the question of timing. Obviously if there is a statute of limitations, but we are not talking about. Because I feel that it takes time sometimes to decide what you are going to do, and people can change their minds, and this is a complicated matter and it could take some time. After all, you didn't wait 6 months. It could take some time to really decide what position to take finally if there was to be a motion to withdraw the reference. And you filed a brief that obviously took a lot of work.

By the same token, it seems to me the case law indicates that if a bankruptcy proceeding has gone along to a fairly ripe stage and, indeed, the work is about concluded, then it can well be appropriate for a district court to deny the kind of motion you are making. That is what I am talking about. I am not really seeking to say that as a matter of law you are out of time. There is argument along that line. That really is not my point.

But I am seriously concerned, I have to tell you, about whether there should be a withdrawal of the reference rather than letting bankruptcy Judge Gonzalez finish his work, decide the motion, and then having the appeal, which there would be an appeal as of right to the district court after

that. And I don't think that you have an absolute right to say regardless of the timing and regardless of the circumstances you have some kind of absolute right to have the reference withdrawn. I think the timing has something to do with it.

MR. KURTZ: Your Honor, let me respond as follows: I guess where I wanted to start with is context. Whenever one addresses time and how quickly one moves one has to look at all the facts, all the circumstances in the context. In the cases that you mentioned people waited months and sometimes years. They went through the very same issues with the bankruptcy court and they really tried to raise them afresh with the district court. So the timing of the facts and circumstances are basically critical here.

The first fact I would like to address with your Honor is the schedule was established to put in an objection to the sales motion on an unprecedented expedited schedule over the objection of others.

THE COURT: What are you talking about now?

MR. KURTZ: I am talking about the sales motion got filed on I think the 4th, on a Sunday.

THE COURT: On what?

MR. KURTZ: May 4, on a Sunday. That is when the sales motion got filed. They set a schedule that week that required objections be filed by the 19th at 4 p.m. That was the context for people to consider their rights, consider

whether they wanted to go forward with an objection, and consider how they would respond to a motion that was made on a Sunday night, May 4, which was --

THE COURT: Wait a minute. Sunday was May 3rd.

MR. KURTZ: Then May 3rd, your Honor.

THE COURT: Alright.

MR. KURTZ: The schedule that the court set with the parties was May 19th for objections. That was the period of time that every party was told officially and finally that you can assess these issues, you can decide how you want to proceed and you must respond to us by 4 p.m. on May 19. That set the clock.

Now, state agencies, public pension funds and everybody else has to now go through this material, digest it, consider the expense, consider the other issues, consider hiring counsel, discuss it with counsel and have counsel put together papers, and they have to do that in a very short period of time. The fact that the court set the 19th as a time to respond to the motion for a sale I submit suggests that that is more than adequate in terms of timing for filing both the objection and for the first time because it had never been joined, issues joined upon an objection to the motion to withdraw. If you don't file an objection --

THE COURT: I see your point.

MR. KURTZ: It's like until we file an objection we

don't have an issue joined. We wouldn't be able to file a motion to withdraw the reference, and we did it in accordance with a court order and we relied on that. The other issue, Judge --

THE COURT: In other words, you did two things. You filed objections and you filed your motion to withdraw the reference almost simultaneously.

MR. KURTZ: Exactly, after staying up all night working on it. And we rely on the court order and until issue was joined, until there is an objection, we can't move to withdraw the reference because it's not a contested matter as to us. We would be without standing to come in and say I know there is a motion here, I don't object but I would like to withdraw it. So we complied with the court order. I never heard, and there is certainly no authority, that you are not entitled to mandatory withdrawal because you met a court order deadline on an objection.

The other issue, and I really don't want to have this go without some focus, is this is being pushed through, as I said. Treasury is deciding the schedule and they decided it over the objection of very, very experienced debtor's counsel who specifically told them that it was going to jam a judge, and us by definition even more than a judge; that it was impossible; that it was a big mistake, and it was such a bad idea you would risk credit boils. Those were all quotes four

days before a schedule and that was for a schedule that would have the hearing on June 15, not May 27.

I don't think a party can create their own exigent circumstances and then rely on those to cry prejudice. The government is requiring us to move. We have had 6 days to go through discovery, fact discovery and expert discovery, on a multi-billion dollar matter. We are getting documents today on depositions that we took yesterday. A whole team of people are taking depositions. This is a run-over and --

THE COURT: What depositions are going on?

MR. KURTZ: The government depositions going forward today, some Treasury Department, the UAW, the union deposition going forward.

THE COURT: Who is taking those depositions?

MR. KURTZ: We and other objectors. We have spent an inordinate amount of time --

THE COURT: What other objectors are working?

MR. KURTZ: In particular no other objectors are raising the federal law issues we are raising, but there are dealers that are being closed down and aren't happy about it who are raising objections.

THE COURT: But the discovery that is being taken, who represents people who are doing discovery?

MR. KURTZ: The pension is represented by my firm are taking discovery. I think Squire Sanders is representing an ad

hoc group I believe of dealers that are going to be I think closed down, although I haven't focused greatly on their objections. And I have seen a chart of other objectors but I don't know that they are anything but the typical bankruptcy objections.

Our objection goes to federal law. So only our objection is the subject of --

THE COURT: I am interested if discovery is going on, here we have this hearing tomorrow.

MR. KURTZ: That is my point, your Honor.

THE COURT: We have a hearing tomorrow. Are you telling me discovery is going on relevant to the hearing tomorrow?

MR. KURTZ: Absolutely.

THE COURT: What is going on today?

MR. KURTZ: The most important discovery we have in the case, the depositions of senior executives of the debtor, the representatives of the Treasury Department and the representatives of the unions. We are supposed to take that discovery today and somehow cross examine witnesses tomorrow. That is the kind of schedule that they are imposing.

THE COURT: What kind of hearing is set for tomorrow?

MR. KURTZ: The 363 sale, evidentiary.

THE COURT: Evidentiary hearing.

MR. KURTZ: We are expected to try the case tomorrow.

THE COURT: Is there an estimate of how long that hearing will take place?

MR. KURTZ: We have not been supplied with an estimate. I would believe it will be at least one full day, perhaps two full days. Maybe other people have different views. I would imagine it would be complete by the end of the week.

THE COURT: By the end of the week?

MR. KURTZ: Correct. So the idea that the government is going to complain about delay while we are operating on all 8 cylinders, relevant to a Chrysler, is just remarkable to us. They are really just jamming us. These are fundamentally important issues.

THE COURT: Let's depart from the question of timing.

This gets to the merits, and I know that I am not deciding the merits of the sale motion but enough has been said about it to make me ask a few questions and I have got questions for other counsel but I have questions for you.

I have read the other papers and they almost uniformly make a very strong plea to have no procedural interference with what is going on in the bankruptcy court because any interference with that could jeopardize this sale and mean that a going concern would be destroyed. You have read all of that.

MR. KURTZ: I certainly have, Judge.

THE COURT: And I will hear more about it from them.

But in your papers you don't deal with that at all and basically I think what you say is you are for a liquidation.

MR. KURTZ: No, Judge.

THE COURT: Well, I don't get anything else out of your papers than that I am afraid.

MR. KURTZ: I will take responsibility for that failure. Your Honor, what we ask for --

THE COURT: You didn't fail. You filed excellent papers, but you can't say everything and that is why we have questions.

MR. KURTZ: Your Honor, I guess what I tried to say and what our position is is that we brought a venue motion because this is the proper venue to hear the matter. In terms of what happens with the company, if our client does better in a liquidation, then we are in favor of a liquidation. I don't think it's ever going to come to that. The sale, as I mentioned, has to happen before July 15. So there is ample opportunity to have a full and fair hearing. In fact, we are prepared to go forward this week, next week. We will get nowhere near July 15. We are not looking to pocket veto or anything like that. We are ready to go forward as soon as the court can hear us.

THE COURT: But I still think it is a fair question to you as to what your client's ultimate objective is. I am looking at page 3 of your motion to appoint a trustee and an

examiner and you say, "Provisions of the law require the court to appoint a Chapter XI trustee (or convert the case to Chapter VII) where the debtor's business is suffering substantial or continual decline with no reasonable chance of rehabilitation. Here the debtor's own filings establish that this is the case."

Now, let me just get one more thing please.

Well, maybe I don't have any other thing.

MR. KURTZ: Your Honor, let me answer that this way: The reason that we want a trustee is because the Treasury Department in violation of law has taken over Chrysler and our debtor is not able to discharge its fiduciary duties to the estate and do what we need to get done so we would like to have somebody put in place that is not in a position to have to bow down to the government and can actually do what a debtor is supposed to do in bankruptcy. The ultimate objector your Honor asked is there is a substantial diversion of value that is going from the collateral securing the loans for the Indiana pensioners to selected and favored unsecured creditors of this administration, like the unions, like the government itself. I mean, this is basically a sham. You have Chrysler in business today writing Chrysler is a company that makes certain kinds of cars that have certain plants, and they have certain employees, and you flip the switch after 363 sale and what do you have? You have Chrysler. It makes the same cars. It has the same employees. It has the same plants but somehow we are not in a

reorganization. We are in a sale of assets.

THE COURT: Just stick to my question. I am not saying that your client doesn't have a right to perhaps insist on a liquidation. I am not saying that. But it is not irrelevant to ask what your client's objective is.

MR. KURTZ: I agree, your Honor. I guess what I am trying to say is we want to capture more of the value associated with our collateral. The new entity is worth a minimum I believe of $20 billion just based on the reinstatement of unsecured notes and obligations and the like. So we believe we are getting a diversion of value. All we want is more of the value. We are willing to take all kinds of haircuts on value but we want more of the value.

And a liquidation, your Honor, is really not any different, by the way, than what they are purporting to do now. At least whether you credit that or not they are selling assets.

THE COURT: There is a difference between a going concern -- look here, and I will discuss it with the other lawyers obviously, but nobody in this room I think knows what would happen to new Chrysler in 6 months or a year. If it goes through it might work out well or it might not work out well, who knows? But the thing is is a court going to take steps which might not give the new Chrysler a chance?

MR. KURTZ: I understand.

THE COURT: That is just one way to look at one aspect, but that is one thing I am thinking of.

MR. KURTZ: Let me try to answer that two ways.

One is let me give you a corresponding policy argument which is that the rule of law should apply even if there is adverse social consequences; that that is really the foundation of our judiciary and I am not really here as much as maybe people would like to be here to figure out exactly what would be best for the country.

I am really here to figure out what is best for the client I represent but I will tell you that capital markets -- it's just as important to respect the integrity of capital markets if we want to have loans going forward than it is to talk about plant closings. I will also say that there is sort of an analogy that gets used in circumstances like this where there is some allegation of harm. Again, the government controls us. The government doesn't have to call the default. The government can't do it until July 15, and it also can do this any way they want. But the real issue -- and people call this sometimes a melting ice cube. We won't have any problem with selling the ice cube before it melts, although in this case the government took it out of a freezer and took it out of the sun and said, "It's melting, let me do what I want to do," even as it's selling the ice cube and worrying about how to distribute the value.

You can't just run over the secured creditors' rights because you want to make a sale. We have no problem with the sale. We have a problem with the distribution of consideration to unsecured creditors in connection with that sale.

THE COURT: I am going to suggest, let me hear from some of the others and I will be back to you.

MR. KURTZ: Thank you, Judge.

THE COURT: Okay.

MR. CULLEN: May it please the contract, your Honor, Thomas Cullen of Jones Day representing Chrysler, and I believe several other people want to speak and I will try to be as direct as I might.

First, with respect to the schedule that we are operating on in the bankruptcy court, which gives us the kind of procedural posture of the case we now have. That schedule and the DIP loan were approved based upon evidentiary proceedings in front of the bankruptcy court where arguments and evidence about the ability and the workability of that schedule and the impact on the debtor and the degree to which the debtor had to get through the proceeding rapidly were all presented and considered by the bankruptcy court and ruled upon in connection with accepting the DIP loan and in connection with accepting --

THE COURT: What is going on with Chrysler? The papers say all manufacturing ceased May 1.

Is that right?
MR. CULLEN: That is right.
THE COURT: Okay.
Now, let's suppose the sale goes through, what is supposed to happen?
MR. CULLEN: If the sale goes through what immediately happens, and this was testimony in front of the bankruptcy court mainly by Mr. Iwisition who is referenced in your papers here and who is referenced in the bankruptcy court's rulings --
THE COURT: Who?
MR. CULLEN: Iwisition, which rhymes with inquisition.
THE COURT: How do you spell him?
MR. CULLEN: Jeepers, your Honor?
THE COURT: Don't worry. A good speller will be along.
MR. CULLEN: Okay.
He testified that what we really need to do, you can have the plants down for a certain amount of time but you have got to keep your relationship --
THE COURT: But what will happen? Will the plants reopen and start making Chrysler cars?
MR. CULLEN: We will try to get back into production to catch the last part of the 2009 model year, yes, your Honor, immediately. We will be back into production by August.

THE COURT: What is Chrysler making? Are they making Dodges also?

MR. CULLEN: Yes.

THE COURT: Any other brands?

MR. CULLEN: Dodges, Jeeps, Plymouth Caravan, which is a minivan. There is a range of platforms.

THE COURT: But the idea would be to get back into production of the Chrysler products?

MR. CULLEN: Newco would get back into production of Chrysler products almost immediately, yes.

With respect to the time, as a legal matter I think inadvertently I am sure Mr. Kurtz misinterpreted the underlying contract documents. The sale document, the primary sale documents, the master transaction agreement between Chrysler on the one hand and Fiat on the other has a date of June 15 -- June 15 Fiat can walk away. It can be extended to July 15 with only regulatory approvals, and we have world-wide regulatory approvals mainly on antitrust grounds that we had to get as well. So the July 15 date is meant to give an extra 30 days if that is the only thing outstanding. But Fiat gets to walk this deal.

THE COURT: They get to walk if what?

MR. CULLEN: If it's not closed by June 15.

Now, with respect to bringing up these issues, I mentioned --

THE COURT: What about the federal government?
MR. CULLEN: Fiat's participation is a condition of the federal government's participation. It's all in a package.
THE COURT: The other proposed owner is, should we say, the UAW or --
MR. CULLEN: UAW or the pension fund. The buyer is going to distribute --
THE COURT: There is another name -- VEBA.
MR. CULLEN: Voluntary Benefit Associate Account.
THE COURT: How do you spell that?
MR. CULLEN: V-E-B-A.
THE COURT: That is really associated with the UAW?
MR. CULLEN: It's a trust which administers certain benefits for the UAW.
THE COURT: Alright.
MR. CULLEN: And those are the people on the buyer's said of the 363 sales transaction as it's configured. Now, that sales transaction old Chrysler is not, as Mr. Kurtz would lead to you believe, on both sides of that transaction. None of the equity owners have an equity in new Chrysler. None of the executive suite has any plans to move over, the office of the chairman, move over into new Chrysler. This is a new buyer that is going to be run by a new board of directors and managed by Sergio Marchionne, the CEO, as the CEO, who is the head of Fiat. This is a genuine sale to start with. And I mention to

the court --

THE COURT: Is anybody paying any money?

MR. CULLEN: The value that is created by the transaction is the following: That Fiat is bringing rights to product lines, rights to technology, rights to distribute in Europe for the new Chrysler, and that is their contribution, not in cash.

THE COURT: The what?

MR. CULLEN: That is their contribution to the new company, not in cash. In return for that contribution, they are getting a 20 percent equity stake in the new company which can go up to 35 percent based on certain performance benchmarks for the new company over time. But those determinations are made on the buyer's side of the equation because Fiat and the U.S. government are the buyers and the U.S. government is supplying the cash, the $2 billion, which is the consideration for the sale of the assets that old Chrysler is selling to new Chrysler.

THE COURT: Just a minute.

So Fiat is not putting up cash. VEBA is not going to be putting up cash, right?

MR. CULLEN: No, your Honor.

THE COURT: How much is the government going to put up in cash?

MR. CULLEN: The government has already put up, as we

discussed. There was the $4 billion loan on January 2nd.
THE COURT: Which is undoubtedly gone.
MR. CULLEN: There is the DIP loan which is --
THE COURT: A little over 3 billion.
MR. CULLEN: 4.9 billion in total.
THE COURT: With the Canadian government.
MR. CULLEN: Yes, right.
THE COURT: Alright.
MR. CULLEN: And then there is the 2 billion, which is the purchase money. And so that is the money that the U.S. government --
THE COURT: Is that all the cash that Chrysler needs?
MR. CULLEN: In terms of cash that Chrysler needs, there are two aspects to what is going to happen after the sale. One is the 2 billion comes in and it will go out for the first lienholders, and if I may correct slightly and make sure I understood what had transpired in front of the court, my understanding is that there is no release of the liens; that what happens is the liens remain in place when the collateral is sold and attached to the proceeds, so it's an existing lien, not released, attached to the proceeds, which would be the $2 billion.
THE COURT: Is it attached to anything else?
MR. CULLEN: In terms of how the distribution will take place --

THE COURT: I mean, is the lien attached to any other assets at old Chrysler?

MR. CULLEN: It attaches to all the proceeds of sale. I think with respect to the distribution of the residual value --

THE COURT: I am asking are there other assets at old Chrysler to which the lien applies? And I think somebody said the answer is yes.

MR. CULLEN: Yes, there are 8 plants.

THE COURT: Alright.

Let me go back. I don't quite tally up sensibly who is going to own. If -- let me just call it the trust. The trust owns 5 percent I think.

MR. CULLEN: Yes, your Honor.

THE COURT: And Fiat initially 20 percent.

MR. CULLEN: Yes, your Honor.

THE COURT: The papers say that the U.S. government is going to own 8 percent.

MR. CULLEN: Yes, your Honor.

THE COURT: Well, if you add up 55 and 20 and 8, it's 83 percent.

MR. CULLEN: Canada has 2 percent.

THE COURT: Canada 2, alright.

MR. CULLEN: And the other 15 percent, your Honor, is Fiat's earn-out, if you will. Fiat can get the 35 percent if

it achieves certain financial benchmarks in the performance of the company.

THE COURT: In other words, Fiat has a kind of a warrant or something like that. It has a right.

MR. CULLEN: It has a right.

THE COURT: It has a right.

MR. CULLEN: Yes. So the other numbers that the court cited are, in effect, the post dilution numbers once Fiat gets to its right.

Now, with respect to the --

THE COURT: Look, this goes way beyond my province in a way, but there has been so much said in the papers about the advantage of this transaction, and is is there any kind of pro forma financial statements or cash flow statements or anything to indicate that this is going to be a going concern, a viable thing, in other words, they open the plants again, they start making Chryslers, and the problems that existed at Chrysler didn't start in 2008.

MR. CULLEN: No, your Honor.

THE COURT: They didn't. And whatever problems they were does anybody say they are solved? The problems with the union, all those obligations, have all those been solved?

MR. CULLEN: "Solved" is a heavy word, your Honor.

THE COURT: I know.

MR. CULLEN: But what has happened is that in the time

period after the first government loan the government and Chrysler and Fiat all were in an intense period of modeling the future and of negotiating with the various other constituencies -- labor, suppliers, dealers, lenders -- to come out with a sustainable package of assets and obligations that could be a viable concern. Fiat is particularly appealing for this purpose --

THE COURT: Why?

MR. CULLEN: Because it solves three of the basic strategic problems of Chrysler. During this period there was also heavy negotiation with the union. There is a new collective bargaining agreement which is part of this. There is a new set of obligations to the VEBA, reduced, which is part of this. There is the impact on the debt which we have already talked about. But Fiat addresses for Chrysler, and this is why Chrysler found Fiat, if you will, in its world-wide search for a strategic partner, it gives it additional scale as a purchaser.

THE COURT: What does that mean?

MR. CULLEN: It's a bigger purchaser. It can get a better price. It can have more uniformity. It can spread costs over more cars.

Number 2, it gives it a broader product line and a broader product line in the lower end, if you will, of size and fuel consumption cars which Chrysler needs in order to meet

CAFE standards and which Chrysler needs in order to sustain its dealers, a broader product line, and it gives it geographic scope, which is the ability to sell Jeeps, for instance, through the Fiat distribution network in Europe and in Latin America, as well as the ability to sell Fiat's and the small Fiat 500, for instance, in the United States.

THE COURT: Do they sell well in Europe?

MR. CULLEN: Very well.

THE COURT: Anybody have a picture of what one looks like?

MR. CULLEN: They look like one of those little non-distinct European really teeny cars, your Honor.

THE COURT: Are they going to go over well in Texas?

MR. CULLEN: You know, your Honor, there are two schools of thought on all of that but with respect to what happened in the middle of 2008 was the shift away from big stinking trucks to littler cars. Is that something that was permanent? Is it going to be as much as it was then? We do know that the government is going to require us to meet 35 miles a gallon under CAFE or the Corporate Average Fuel Efficiency. We do know that without a substantial portion of our product line at those levels we do know that we can't reach that.

THE COURT: Do we know that the public is going to buy those cars? And can the government really come along and force

us to buy those cars?

MR. CULLEN: No one knows.

THE COURT: They probably can't. The thing is is there something about profit, not ideology, but is there something about profit that is built into this transaction?

MR. CULLEN: Yes, your Honor.

THE COURT: And the market?

MR. CULLEN: Yes, your Honor.

THE COURT: What is that?

MR. CULLEN: Your Honor, when we first went to the government, Chrysler first went to the government to get the loans, what we had to do was present a viability analysis and the viability analysis had to show that we were going to have positive EBIDA, earnings before interest tax depreciation, that we were going to have positive cash flow in order to pay off and address these loans over the near term and at every point Chrysler would negotiate with Fiat about what were the appropriate assumptions with respect to the overall demand for cars in the United States at a depressed level now, and will probably work it's way back to the 2007 level probably not by until 2013.

One of our planning complaints was within that SAR what do we sell and what kind of profit do we make on it? And we have it by product line and by geography and we have it for the new cars that we are going to bring out. So we have those

EBIDA figures that have been negotiated out and show positive numbers, show a viable enterprise for this company going forward.

THE COURT: Look, you sort of have gotten into a subject which is germane to the motion, and that is this: The claim is that the Chrysler management while Chrysler was debtor in possession, the management basically vacated the process of negotiating this sale and left it entirely to the White House and the Treasury Department and the claim is that they basically didn't even know what was going on.

MR. CULLEN: That, your Honor, is grossly untrue. It is a shameful calumny on these people. What this company has been doing for the past year in the face of the worst auto market in 30 years is trying desperately to restructure this market and to find a deal that was bankable by someone to preserve this company and to preserve a piece of Chrysler and preserve the product brands going forward. And so what they did was working 24-7 on this, they looked at the durable core of assets that this company had, the trucks and the jeeps and the minivans that people had always bought, and they thought in what configuration can these durable, valuable things go forward? We need money, first. We need someone who is going to bank our ability to go forward. So we had to go to somebody. We needed a partner and we needed a bank to save this durable core of Chrysler. And we looked all last year,

all of 2008, around the world talking to various partners, talking to General Motors, talking to Nissan, talking to everyone who would talk to us about this, and trying to gauge who could act with that.

And then when we got to the end point of that process, what we really needed, then we went to our first lien lenders and said can you tied us over? Are you interested in investing in this in these troubled times? Perhaps understandably enough they weren't interested.

THE COURT: You mean you asked them for more money?

MR. CULLEN: More money, yes, your Honor. We asked them for both more money and concessions, to lessen the debt load so we had a viable business prospect going forward. They were not at that time interested in either. This drove us into the arms of the government and as the banker of last resort we had to present to the government a viable deal. We had to present to Fiat a viable package of assets that could, when combined with the government financing and the Fiat products, present something that could go forward. That was our effort.

Was the government and what the government was willing to finance important to us in that time period? Of course it was. We desperately, desperately needed that financing or we would have to liquidate. And so we negotiated hard with the government. We negotiated hard with Fiat. We negotiated hard with the unions in order to put together a package that could

sustain a sale, that could sustain a purchase price.

THE COURT: Is it correct, and there are a lot of details that I can't get into, but is it correct that the management of Chrysler actively participated in a negotiation of the terms of the 363 sale?

MR. CULLEN: Absolutely, your Honor. Absolutely.

THE COURT: What is claimed is that this was really the work of the White House and the Treasury Department and that the management of Chrysler stepped aside and just let it happen under the will of the White House and the Treasury Department, and at least in the days leading up to the Chapter XI and what has happened since.

Do you get my question?

MR. CULLEN: I do get your question.

THE COURT: What is the answer?

MR. CULLEN: The answer to the question is that we were always attempting to achieve 100 percent buy-off in the sale --

THE COURT: Achieve what?

MR. CULLEN: 100 percent consensus of all the stakeholders in what we were trying to do. We had attempted to negotiate with -- we, Chrysler, had attempted to negotiate with the first lienholders about what kind of concessions they would make in order to make the resulting company viable. It came to a point where they said to us you are not providing the cash.

You, Chrysler, are not providing the cash, so we, the first lienholders, want to negotiate directly with the U.S. government to see what we can achieve in direct negotiations because you are not providing the money that is going to pay us, the government is. And so what we did in order to satisfy our fiduciary duty to maximize value for the estate is we were trying hard, as I said, to pull together a package of assets that we were going to sell and that was salable and that would sustain the kind of price that the banks could agree to and the government could agree to, and the banks negotiated directly with the government. When it came right to the eve --

THE COURT: You say the banks.

MR. CULLEN: The first lien secured.

THE COURT: Who negotiated on their behalf?

MR. CULLEN: J.P. Morgan, its lawyers. Citibank was involved in the negotiations. We made various offers ourselves to the first lienholders.

THE COURT: Was Simpson Thacher representing them?

MR. CULLEN: Yes. And I will say this: That at the very last moment of this process when it looked like we might get 100 percent of the first lienholders and we were hoping to do so, we went back to the government because we didn't have the extra money to provide ourselves and said, please, could you please sweeten the offer to the banks? And they did.

THE COURT: They did?

MR. CULLEN: And they did. They did.
THE COURT: Sweeten it from what to what?
MR. CULLEN: At the last moment there was an offer on the table, as I understand it, to the banks of the number that was finally agreed to, which was $2 billion. We went to the government and others went to the government and said could we please do more than that for these banks? The government gave a time limited offer of $2.250 billion with a time limit on it to get 100 percent of the banks and it did not happen.
THE COURT: What do you mean it did not happen?
MR. CULLEN: They didn't get 100 percent and so the final number was 2 billion for the agreeing banks, for the whole facility but without --
THE COURT: You were trying to get literal consent from all the secured lenders.
MR. CULLEN: We were trying to get 100 percent to stay out of the bankruptcy. Without 100 percent consent we have a default. So that is where we were on that.
Now, if I can go back --
THE COURT: I tell you what, you have been very busy answering my questions but I think we are running a little on the late side and there are a few other people to hear from.
MR. CULLEN: Can I say one thing?
THE COURT: Oh, of course.
MR. CULLEN: Just on the core issue here, which is

that the 157 case law, I think that 157 in the legislative history and in this circuit, in this district court, provides a relatively narrow and functional basis for withdrawal. The issue has to be novel and it has to be essential. And it's rooted really in the desire to not allow collateral issues to the bankruptcy expertise to derail the bankruptcy with diversions, with things that are outside the range. It's a thing of a functional company's competence of the bankruptcy court and the district court.

THE COURT: I am pretty well aware of that.

Let me just say this: That I don't think any hearing before the bankruptcy court or before this court or any appeal needs to take forever, but I do think this: That the issues that have been explored in a somewhat tentative way this morning need to be written out. There needs to be a resolution. Otherwise a very, very important matter of great public interest will be misunderstood, and it isn't up to me to tell Judge Gonzalez how to run his court or how to write his opinions, but I am learning a lot this morning that is very important for me both as a judge and, frankly, as a citizen. I have learned a lot from Mr. Kurtz. I am learning a lot from you, and I haven't even gone around the room.

This is a matter which has been written about in the press, and all kinds of things have been said. And the press has its way of being critical, you know, and so all I am saying

is I certainly hope that before this is all over there is really in some opinion there is a full exposition of the facts. It will help the public. It will help the financial world, the public in general, and it hasn't yet been done by any means. And it hasn't had the opportunity that it should and I just hope that it will.

I really have to go to the other lawyers.

MR. CULLEN: You left one question outstanding that I feel a need to respond to on the procedure. With respect to the TARP and unconstitutional use of improper and unconstitutional use of TARP objection, that was made on May 4 by White & Case on behalf of the previous clients in connection with the DIP and the other filings. I would point to the post-petition financing order on page 19 that they filed on May 4, paragraph 32, and Exhibits G and H of the government's filing. So the problem with TARP was brought up in relationship to the DIP issue on the 4th.

THE COURT: Alright. Thank you.

Who is next please?

MR. PANTALEO: Good afternoon, your Honor, Peter Pantaleo from Simpson Thacher.

I represent J.P. Morgan, who is the agent of the first lien credit facility. Your Honor --

THE COURT: I hope Mr. Kurtz got the word around. The first thing I saw Friday night when I got home was the paper

filed on behalf of J.P. Morgan. You remember, I don't know if you were here, but the very first meeting we had I said that I had no idea who was involved in all aspects of this and as far as I knew I didn't own any stock or the trust and I didn't own any stock in anything having to do with Chrysler. The trust, the trustee, owned stock on Morgan Chase. I told Mr. Kurtz on the phone Friday night, and I hope he circulated the word.

As far as I am concerned I have no problem but I don't want it to be a concealed fact. And it would have been possible, but not very practical, to get a new judge in Friday night. So if I hear no objections I hear no objections on.

MR. KURTZ: I will just confirm for the record that I did circulate that information.

THE COURT: Alright.

But go ahead please.

MR. PANTALEO: Thank you, your Honor.

Your Honor, I had understood that your Honor had determined that you didn't want to hear argument on standing and so I won't be speaking to the cases that were cited in the pleadings but I do think, your Honor, it would be useful for the court to understand a little bit about our process and the agreements that we had in place because it does speak directly to the two basic questions you had asked counsel, both on timing as well as ultimately what is it --

THE COURT: What I am interested in as far as any

representative of the secured lenders is what did such representative do in connection with the Chapter XI, in connection with the negotiation of the proposed sale. What did they do?

MR. PANTALEO: Your Honor, before the company went into bankruptcy we negotiated the terms of a consent that is binding on all of the lenders in the syndicate by virtue of a contract that all the lenders have signed. And the terms of that consent your Honor heard before was that the company with our permission would sell the collateral or most of our collateral, some of it is not being sold.

THE COURT: Did you get every secured lender to sign that?

MR. PANTALEO: We received consent from lenders holding in excess of 92 percent of the amount of the debt.

THE COURT: I understand. But not 100 percent.

MR. PANTALEO: Not 100 percent. And as your Honor probably is aware when you have a large syndicated deal the contract is clear that 100 percent is not required. If it was required we would never ever reach an agreement because understandably, your Honor, there is always someone, and here we have someone, who as they honestly told you simply wants more value.

THE COURT: Alright.

MR. PANTALEO: So what we did before the filing is

J.P. Morgan as agents with the steering committee composed of other first lien lenders spent weeks negotiating.

THE COURT: Who did you negotiate with?

MR. PANTALEO: Generally speaking directly with the source of funding for the money, for the recovery we were looking for, which is the government. And it was a natural instinct on our part being lenders, understanding that there was a source of funding, to negotiate directly with that source. And so that is basically the process that we had for several weeks leading up to the bankruptcy. Prior to bankruptcy, just prior to bankruptcy, an agreement had been reached that ultimately was accepted by 92 percent of the holders of the debt. And this agreement was to consent in bankruptcy to the sale of the collateral in exchange for the $2 billion.

So when we started bankruptcy we had that agreement and, your Honor, we had a conference call with all the lenders prior to bankruptcy. We explained the proposed terms. We asked for their support.

Mr. Kurtz's clients were among those lenders and so they knew as of the end of April exactly what the terms were, what the proposed deal was. And while it was always the objective of the agent, and you can understand why, to try to get everybody to say yes, to have as much consensus as possible, in a circumstance like this it just wasn't possible.

But we got a fair amount of consensus and, frankly, more than what is required under the terms of the agreement. So in addition, however, to having an agreement with the government and ultimately therefore with Chrysler as to the terms under which we would consent to the sale, we also have an agreement in place with all the lenders. And that agreement says two things. First, it says that in the event of a bankruptcy --

THE COURT: What lenders?

MR. PANTALEO: All the lenders, the loan documents which everyone signs.

THE COURT: When do they sign that?

MR. PANTALEO: They sign when they become lenders.

THE COURT: I am aware of that.

MR. PANTALEO: The loan trades periodically so some are original lenders --

THE COURT: Incidentally, were the loans marketable, could people trade them?

MR. PANTALEO: They were being traded, yes.

THE COURT: Were they being traded in 2009?

MR. PANTALEO: Yes, very likely.

THE COURT: Do you have any idea what they were being traded at?

MR. PANTALEO: Well, again, likely and what we had understood, I didn't verify this myself, it was approximately 14 cents on the dollar.

THE COURT: Going back to Mr. Kurtz, when did the Indiana pension funds take out their loans or whatever?

MR. KURTZ: Just one second, your Honor. I just need to consult the declaration.

THE COURT: Okay.

MR. KURTZ: We disclosed all that information in a bankruptcy filing, form 2019. I will see if I have it with us.

MR. PANTALEO: I have it.

Glenn, do you want me to give it to you?

MR. KURTZ: Yes, thank you.

They were purchased on the following dates: August 13 through 15, 2008 -- each of them was. They were all purchased between August 13 and August 15, 2008.

THE COURT: At what prices?

MR. KURTZ: 43 cents.

THE COURT: On the dollar?

MR. KURTZ: On the dollar.

THE COURT: Okay.

MR. PANTALEO: So, your Honor, just before bankruptcy having negotiated the terms of the syndicate's consent to the sale of the collateral in a bankruptcy proceeding for $2 billion in cash, we notified the lenders generally obviously because we needed a sufficient number of lenders to support this, including Mr. Kurtz's client, and we reached agreement with the company.

As I was saying earlier, your Honor, each of the lenders also has an agreement with each other, including with the agents and the collateral trustee, and basically that agreement says two things. It says -- and I am simplifying this, your Honor -- it says if there is a bankruptcy, then it's really up to my client, the agent, with the consent of a majority of the holders in amount, which it had, to direct or to consent to the sale of collateral in the context of a bankruptcy proceeding or any foreclosure or in any process in which the collateral is liquidated for cash.

THE COURT: Look, I appreciate you going into that but I have maybe an oversimplified position on standing. The question is did the plaintiffs have standing to make the motions they are making before this court? And the answer to me is yes under the bankruptcy while they are an interested party or they are interested parties, it doesn't take away one bit from anything you have said but as far as being able to make the motions that they are making, they have standing to make these motions. The bankruptcy court has heard their objections and has treated them as being interested parties. It doesn't mean anything that you say about the rights of where you stand on what you are talking about. It doesn't mean that you are wrong.

But let's go to another point. Frankly, if you tell me that you take the position that you negotiated in good faith

with the government who was going to provide the money, that is your position, right?

MR. PANTALEO: It is, your Honor. And it's also our position that they have already consented by virtue of the agreements that they have signed.

THE COURT: Well, alright.

MR. PANTALEO: I apologize, your Honor. That is the last I will say of it. But I think it's important for your Honor to appreciate that. To us it's less about standing as it is about --

THE COURT: I am right now more interested in finding out -- not that factual issues are going to get resolved at this hearing, but I want to know the positions of the parties. The position of Chrysler is that the management negotiated actively. The position of Morgan Chase is that you negotiated actively on behalf of the secured lenders.

MR. PANTALEO: With the steering committee as well, yes, your Honor.

THE COURT: With the steering committee, yes. That is really all I need. That is sort of what I need to know at the moment.

MR. PANTALEO: And that when the company filed bankruptcy full disclosure was made to the lenders at the end of April of the terms of the sale, of the terms of the DIP financing. Obviously they all knew that TARP money was used

back in January and, you know, to us, your Honor, the issue is in addition to obviously what I said a few minutes ago, which is they have already consented to this, the issue is not so much TARP money but it seems to us, your Honor, the issue is it's just not enough money.

Your Honor, that goes to the heart of the fact that, you know, we have a deal. And while we would have liked more money we would have liked the last amount of government money to be 4 just like it was for the DIP, just like it was in January, instead of 2, but at some point you reach a deal and people agree and people are bound and it's not about where the money is coming from. I mean, they are very honest about it. They are just saying they want more. I appreciate that, your Honor. We all do.

THE COURT: I think what they are basically saying is -- maybe they are not quite saying it this way -- that here is a sale and we are told we have to accept so many cents on the dollar, the face amount of the notes, and we are given this prediction that there is this going concern that is going to go forward and there certainly shouldn't be a liquidation, but what if 6 months from now new Chrysler is in bankruptcy?

MR. PANTALEO: That is why we took cash.

THE COURT: And so there is a liquidation anyway, and we didn't get very much out of this process. That is what they are really saying, that this deal was rammed down the throats

of the people and that is what they are complaining about.

MR. PANTALEO: Sure, your Honor, but 92 percent of the debt holders didn't have to say yes. They could have said no. They could have said no as these gentlemen are saying no.

THE COURT: They certainly could have done that.

MR. PANTALEO: They said yes. They decided maybe for the reasons your Honor indicated that there may be risks associated with perhaps the new Chrysler so they took cash. We are the only parties getting cash in this deal. All the other stake holders are not getting cash.

THE COURT: Well, not a lot of cash is coming in.

MR. PANTALEO: Not a lot of cash is coming in but whatever is coming in is coming to us.

THE COURT: It isn't up to me to decide, but do you think there is enough cash coming into new Chrysler?

MR. PANTALEO: Your Honor, I don't know the answer because from our perspective since we are getting paid and we no longer have claims against new Chrysler and we still have some old claims against old Chrysler, it's not really a concern of ours.

THE COURT: I know. Well, it's beyond anything I can deal with.

THE COURT: I am going to thank you, and who else would like to speak, and we need to wind this up.

Thank you very much.

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MR. PANTALEO: Thank you, your Honor.

MS. VARGAS: Good morning, your Honor, Jeannette Vargas, United States Attorney's Office on behalf of the United States Treasury.

As you said, I will attempt to be brief and I would like to make two essential points O points that have been raised earlier in this morning's discussions. The first relates to the timing of the withdrawal motion which is an issue that we raised in our brief.

THE COURT: Yes, you did.

MS. VARGAS: Mr. Kurtz focused rightly on the May 19 objection date for the withdrawal, for the sale objection. But that is not the relevant date. There are a number of times earlier in the proceedings when his clients could have involved themselves in bankruptcy proceedings and could have withdrawn the reference.

On April 30 was the petition date and that was the date upon which the Treasury Department immediately, that same evening, filed its statement with the bankruptcy court disclosing to all parties the Treasury's role in the proceedings, the statutory authority upon which we based our role in the proceeding, specifically the EESA statute that was referred to earlier, disclosed the terms on which we were providing financing, et cetera.

On May 1st, the next day, Chrysler filed their motion

to approve the interim debtor-in-possession financing and, as Mr. Cullen stated earlier, a different group of similarly situated secured lenders filed an objection to that interim DIP order and they raised the very EESA issues. That was on May 4, I believe, or perhaps May 3rd, excuse me. May 3rd the sale motion was filed. At any time they could have filed an objection to the sale motion. They don't have to wait until May 19. May 19 is the date by which it has to be filed. There is nothing to say that they couldn't have submitted an objection to that earlier.

But perhaps the most fundamental date at which they could have raised their objections is the date upon which the bidding procedures order was heard, which was on May 5. And at that time they could have come forward and contested the schedule that was being set. And we heard Mr. Kurtz say a lot about the schedule being rammed down their throats. Well, they did not appear in opposition to the schedule that was being set. There was an opportunity for objections. There was an opportunity to be heard on the schedule.

There was an evidentiary hearing before Judge Gonzalez on the schedule, and witnesses provided testimony. There was cross examination I believe. There was documentary evidence and Judge Gonzalez, having heard all the evidence, decided that this expedited schedule was absolutely necessary because Chrysler is a wasting asset and if there was any possibility

that it was going to be preserved as a going concern that the schedule had to be May 27 for the sale hearing. Yes, is that a quick schedule? It is. But in these times it's not unprecedented as we know in past years, Lehman I believe went to sale within 7 days of filing its petition date when it was sold. If they had had these concerns about the schedule they could have preserved their right to come forward. But we did not hear from them until May 19, and we did not hear from them on this withdrawal motion on May 20.

And specific to the issues about EESA, again I note that those same issues were raised in this case by these attorneys in a brief that looks very similar to the withdrawal motion that we are adjudicating today on May 4, the same constitutional issues. They mentioned the purported authority of Treasury under the EESA, the constitutional-takings argument that they raised in their papers, citation to the Bradford rule. We will see some of the paragraphs indeed are verbatim.

So to say that May 19 was the earliest date they could have come forward is false. And another point on timing is we have already heard that even before the Chapter XI was filed the administrative agent was soliciting consents from the secured lenders. There is no party in interest here who is unaware that Chrysler was going into Chapter XI. There was no party in interest who was unaware of the negotiations that were taking place, that there was a possible Fiat deal on the table,

the United States government's involvement. This notion they received formal notice on May 18 and they had no idea this was going on before that really flies in the face of the publicity that has surrounded this and even the facts we have heard here today.

THE COURT: I understand what you are saying. I wish you would address -- and other lawyers have addressed it but you have a segment about the application of Section 157(D). Regardless of the merits there certainly is statutory interpretation raised by the Indiana funds and interpretation of the U.S. Constitution, and Mr. Kurtz has taken the position that that is really sufficient for mandatory withdrawal of reference.

What do you say to that?

MS. VARGAS: Your Honor, we say it's not sufficient.

Let me respond in two parts. First, and I understand your Honor expressed thoughts about the standing issue earlier, but let me just explain the disjunction between the harm that they are alleging and the EESA issues that they are raising. I think they are best summed up by Mr. Kurtz himself when he concluded his statements earlier and he said we have no problem with the sale. We have a problem with the distribution of assets in connection with that sale. That is correct. They don't have a problem with the sale. They don't have a problem with the Treasury providing $2 billion. What they would like

is for the Treasury to provide them with more EESA money. That is not a harm attributable to whether or not the Treasury is properly financing the Chrysler sale through the EESA statute. That is a complaint about --

THE COURT: Look, legal briefs have a lot of different elements but certainly, unless I am reading it completely wrong, they are objecting to the method by which this sale was arrived at, the proposed sale was arrived at. And they are objecting that the proposed sale favors certain parties and disfavors the secured lenders.

MS. VARGAS: We agree, your Honor.

THE COURT: So they are certainly claiming harm as a result of what they say is a violation of a federal statute and a violation of the federal Constitution. So they are raising -- and maybe they are wrong, but they are raising those issues and is that not enough to get them a withdrawal of the reference under 157(D)?

Let's put timing aside. Let's talk about the relationship, however you want to answer that. That is my question.

MS. VARGAS: Your Honor, the short answer is no. The Second Circuit's interpretation of 157(D) is that it is a very narrow scope and that is the resolution --

THE COURT: How would you define the narrow scope?

MS. VARGAS: The narrow scope is that the resolution

of the motion that is pending before the bankruptcy court, which is in this case the sale motion, must centrally depend upon resolution of the federal question and it can't be intertwined with Bankruptcy Code issues which are really the province and expertise of the bankruptcy court. In this case exactly as you articulated, what they are concerned about is the fact that there are priority issues. They are claiming that unsecureds are getting distributions in advance of the secured creditors. That is a bankruptcy issue. They are complaining that the Department of Treasury has seized what they call constructive control over Chrysler's operations. That is an issue that the bankruptcy courts routinely resolve under 363(M) of the Bankruptcy Code which speaks to the good faith of the negotiations and courts examine in that context whether or not the transaction was an arm's length or whether or not there was an insider role being played by in this example, for example, the Treasury. These are issues that the bankruptcy courts resolve all the time and --

THE COURT: In other words, the conduct of the parties before the court, or the issues about the conduct of the parties before the court.

MS. VARGAS: Exactly. That is a factual question that will be decided at evidentiary hearing and either the bankruptcy court is going to hear evidence that will suggest that the Treasury behaved appropriately, which is what we think

the evidence will show. They will contest that evidentiary hearing saying that we constructively seized Chrysler and the bankruptcy court will resolve those issues under the Bankruptcy Code. But EESA doesn't speak to any of those issues. There is nothing in EESA that speaks to how involved can the Treasury be in negotiating the 363 sale, how involved can it be in negotiations with various stake holders. The statute doesn't speak to that.

The only question under EESA is whether or not Chrysler is a financial institution. But that has nothing to do with the issues they are raising. It has nothing to do with the resolution of the sale motion. So under the Second Circuit case law as it has been defined there is no substantially material issue of federal law.

THE COURT: Okay.

I am going to let you go. Thank you very much.

I think we are reaching a point of exhaustion so let us try to wind this up.

MR. ECKSTEIN: Your Honor, good afternoon. My name is Kenneth Eckstein and I am with the law firm of Kramer Levin. We are counsel for the official committee of unsecured creditors in the case.

I appreciate your Honor has heard a good deal already so I will try to very briefly address what I think are one or two bankruptcy issues that I think are directly relevant to the

court's consideration on the motion today.

THE COURT: Okay, do that.

MR. ECKSTEIN: First of all, your Honor, I would like to make sure you have a perspective of where I sit in the case. On May 5 an official creditors' committee was appointed to represent a diverse constituency of unsecured creditors affected by the Chapter XI case. On our committee we have 11 members, including several dealers who do business with Chrysler, some of whom are going to be dealing with new Chrysler, some of whom will not be dealing with new Chrysler and will have their dealer contracts rejected. We have several suppliers who have contracts with Chrysler. We have the UAW. We have the PBGC, and we have two product liability or tort claimants who represent claimants who have claims against existing Chrysler and are concerned about what rights and what treatment their claims are going to receive as a result of this transaction.

Your Honor, my committee has very diverse and complicated interests in this transaction and have come to this in some respects under a great deal of time pressure and have had to deal with an extremely fast-paced bankruptcy case and have had to try to integrate ourselves into these facts probably with as much haste as any of the parties.

Having said that, your Honor, my committee has reached the conclusion that fundamentally it is very favorable for all

parties in this case for this transaction to occur. We would love to make changes to the transaction and the committee is trying to work with various constituencies to make sure that this transaction is done in a manner that is most beneficial to the interests of all unsecured creditors. But the reality is the alternative to this transaction is liquidation. The deadline for third parties other than Fiat to make a competing offer for this company has now run and as parties predicted, no other third party has surfaced and made a competing offer for this company. We are therefore confronted with either proceeding with this negotiated transaction through Section 363 of the Bankruptcy Code or resorting to liquidation.

My clients, very much like Mr. Kurtz's clients, would like to improve the transaction. But the fact of the matter is we all appreciate that we are dealing with a very difficult business situation and legal situation that is being addressed by the Bankruptcy Code.

The legal point, your Honor, that I would like to bring to your Honor's attention really goes to the question that was just being addressed a moment ago by the representative of the government, and that is are the issues that need to be confronted in this bankruptcy case, are they basically bankruptcy issues or are these really issues that implicate nonbankruptcy federal law? 28 U.S.C. 157(D) only permits or only requires the withdrawal of the reference if

substantial and material consideration of nonbankruptcy law, federal statutes, is necessary to the resolution of the case.

Now, if we step back and if we look at the reality of this case, there are many, many complex bankruptcy issues that are going to need to be decided. And I don't want for a moment to minimize the significance of the issues that are being raised by the objectors. And a court is going to have to consider a host of technical objections to this transaction in order to determine whether or not the transaction should or should not be approved. Nobody has quarreled with the suggestion that the transaction that is being proposed has controversy to it. Should this transaction be permitted to proceed under Section 363 of the Bankruptcy Code rather than through a plan of reorganization? That is a very serious question.

THE COURT: Say that again.

MR. ECKSTEIN: Should this transaction be permitted to proceed through Section 363 of the Bankruptcy Code, which is the Bankruptcy Code section that permits the sale of property by a debtor in possession, or, alternatively, should the debtor be required to proceed with his transaction under the more complex, time-consuming process of a plan of reorganization?

Now, that is a very important question. I don't minimize that. But that is a Bankruptcy Code question. The question has been raised is this what is referred to in the

case law as a sub rosa plan, essentially a plan of reorganization that is disguised in a 363 sale. That is a very good question. That is being briefed as we speak before the bankruptcy court. That is a complicated bankruptcy law question and, your Honor, we would submit that is a bankruptcy law question that should be heard by the bankruptcy court. The court should hear evidentiary testimony. It should be briefed, and if people are not satisfied with the outcome of that issue, there is an appellate process, first to the district court and then, if necessary, to the Court of Appeals, and ultimately in certain cases to the U.S. Supreme Court. But that is fundamentally a bankruptcy question.

Now, there has been a lot said today whether the parties negotiated this transaction appropriately or, in essence, was the transaction negotiated in good faith. One of the issues that is going to have to be confronted by the bankruptcy court when these hearings begin tomorrow is whether or not ultimately the parties will be entitled to rely upon a finding by the bankruptcy court under a section of 363 referred to as 363(M) as to whether or not this transaction was proposed in good faith. That is an evidentiary finding that is contemplated specifically by the Bankruptcy Code and that really goes to the issues that your Honor has been hearing today.

THE COURT: What part of 363 are you talking about?

MR. ECKSTEIN: Section 363(M), as in Mary, contemplates essentially the question of whether or not a transaction has been negotiated in good faith. It's a factual finding that is typically included in an order approving a sale under Section 363. And if you look at the order that is being proposed in this case certainly the buyer is going to want an order from the bankruptcy court that the transaction was negotiated and implemented in good faith. And that is going to go directly to the issues that have been discussed today.

Now, if we step back for a moment and we ask ourselves to be pragmatic, while I understand that the objectors have raised the TARP issue, and it's a creative suggestion as to why maybe they can fit within the standards for withdrawal, the reality is whether it was the U.S. government or whether it was Citibank or whether it was Barclays or any other institution, if somebody had come along and loaned Chrysler $4 billion as debtor-in-possession financing, Mr. Kurtz would still be getting up today and saying I don't like the business terms of the transaction. I don't believe it is fair. I believe some parties are getting too much at my expense.

We all appreciate that is not a new problem certainly in bankruptcy. That is what we argue about day in, day out. How do you allocate a limited pool of resources among a constituency of competing creditors? That is what a bankruptcy case really boils down to. And what Mr. Kurtz is raising is a

legitimate question but he should be bringing that question to the bankruptcy court, have the bankruptcy court make a finding, and ultimately if he doesn't like the conclusion he can take it up on appeal. And what this essentially seems to be, at least to us, is a frustration with the response that Mr. Kurtz's clients are getting from the bankruptcy judge and attempt maybe to see whether there is another court that will be more friendly, more accommodating to requests, essentially to see whether or not maybe by shifting the venue we will get a better reception.

Now, I appreciate the suggestion but we can't lose sight of the fact that this is a very fundamental legal motion and the reality is the issues that we have to decide in this case are fundamentally bankruptcy law issues.

Can the assets be sold free and clear of the bank's claims? We heard today the banks have liens on substantially all the assets. There is a very, very technical process under way as to whether or not the banks have appropriately consented to letting the assets be sold free and clear in exchange for $2 billion of cash. Whether or not 2 billion is the right number or not, there is a legal question. That is implicated by Section 363(F) of the Bankruptcy Code.

Does Section 363(F) of the Bankruptcy Code permit the court to approve the sale of assets free and clear of liens, free and clear of claims? My clients, members of the unsecured

creditors committee, also have issues about whether or not it is or is not appropriate to sell assets free and clear of claims. For example, if you are a product liability claimant and you have claims against Chrysler, there is a question raised, and if you look at the objections the question is should new Chrysler be responsible for product liability claims for vehicles that were purchased prior to the transaction? That is a difficult question. That is a Bankruptcy Code question governed by Section 363(F).

THE COURT: Let me ask you this: What you have said is there is either a sale or a liquidation. In other words, you do not believe that it is viable for the bankruptcy court to turn around and say now we must consider this to be a reorganization and go through the processes of reorganization. I take it you don't feel that there is time or opportunity for such a thing, right?

MR. ECKSTEIN: Your Honor, we are satisfied in the short time that we have been involved in this case that this company does not have the financial flexibility to essentially work through what is at minimum a 90- to 120-day plan confirmation process.

THE COURT: Now, look, I am going to ask a little different question. I don't know any specifics but assuming that there is on the table the sale, which of course there is, is there an opportunity for the bankruptcy court if there was

some sound suggestion for modification of the terms of sale to entertain that idea, or is it a total take it or leave it on the demand of somebody or without the demand of somebody is it an absolutely take it or leave it thing without any opportunity for anybody to voice any suggestion about improvement or modification?

MR. ECKSTEIN: Your Honor, that is an important question. The answer is there are, as we speak, extensive negotiations that are going on among all of the parties in this case over many aspects of this transaction. Every aspect of this transaction is still being discussed. I don't want to suggest to your Honor that the economics are going to change because it takes agreement, but there are releases that are being sought. There are treatment of various constituencies that are being discussed. There are numerous important issues affecting many parties in this case, including the lenders, the unsecured creditors, the lenders, the PBGC, the union. Every party at the table today has issues that are still the subject of discussion and I expect will continue to be discussed both up to the sale here in conclusion and there will still be issues that have to be discussed after the sale is concluded because your Honor asked me, and I want to make sure your Honor appreciates, that we anticipate is this bankruptcy case is going to be a two-step case. Assuming the sale transaction is approved, then the sale will ultimately get consummated and, as

your Honor heard, there will be residual assets left over and we would expect that at that point in time there will be a plan of reorganization proposed to deal with the distribution of the remaining assets to the various creditor groups and so there will, in fact, be a second step to this case, although nobody should minimize the fact that the first step is, from a business standpoint, where all the marbles are.

THE COURT: Well, on that I am really saying what I am saying with some trepidation because I am sure it's way out of my realm but obviously it's not up to me to wish anything should happen. It's up to me to decide the issues that are before me, but, on the other hand, there has been a lot said in the papers over and over and over about the desirability of this plan and the need not to frustrate it and so forth, and you don't have to live in this country too long to worry about the fact that some plan like this could work or it could be a disaster in 6 months, and I am not saying that to say anything except we know from experience that there are problems and I am not basing my statement on any information at all except just that history shows that this is a problem area. So I assume that there would be an opportunity in the course of the further bankruptcy proceeding for people to voice ideas of how to improve this for the sake of all concerned.

I assume that that can be done, right?

MR. ECKSTEIN: Your Honor, it absolutely can be done

and needs to be done and I think, as your Honor correctly points out, there is no guarantee that even if this transaction is approved that the company will be successful.

THE COURT: I assume that it would be the desire of the people in this room who are trying to foster the plan that they would want as good a plan as possible with as best a good assurance as possible.

MR. ECKSTEIN: That is exactly the goal and obviously the goal is to have a new Chrysler that is financially viable and sound and has the best opportunity to be competitive in the marketplace. I think as Mr. Pantaleo indicated, his clients, the lenders, that include Mr. Kurtz's clients, they are receiving cash. They are essentially being very conservative about the future. The employees, the dealers, the suppliers, they are all going to be doing business with new Chrysler in the future and they are the ones who are in a sense taking the biggest risk that new Chrysler is going to be successful and if it's not successful they will have received nothing for essentially this process, but there is certainly hope and expectation that by allowing new Chrysler to get implemented through this process we maximize the chance that there will be jobs; that there will be a supply chain; that there will be a dealer chain; that there will be the ability for this company to rehabilitate.

And, your Honor, if you think in sort of the macro

perspective, Chapter XI is a unique statute because there is no other country in the world that really had as forward thinking a bankruptcy statute as the United States Bankruptcy Code because the United States Bankruptcy Code permits the possibility of reorganization rather than knee jerk into liquidation. And this is a technique that has been used in other cases and it has been used successfully. Obviously it depends on business, but this is a legal technique that the bankruptcy court is familiar with and my recommendation, your Honor, from where we sit is let the bankruptcy court finish its job and let the appellate process if it has to work through, but to take this case literally at a day before the hearing and turn it upside down to start again in another venue, because that is what would have to happen, and deal with the same questions, really is not accomplishing what we think is the goals of reorganization.

THE COURT: Fine, thank you.

Does anybody else wish to speak?

We have to conclude.

MR. LACY: Robinson Lacy, your Honor. I represent Fiat and new Chrysler and I think I am the one person in the room whose sole interest is the viability of the ongoing business.

Fiat obviously would not be here and would not have signed up for this if it did not believe that new Chrysler was

a viable company. Provided that the hearing on the sale motion can be heard tomorrow, Fiat does not care whether that motion is heard by the bankruptcy court or by your Honor or by any other judge of this court or even, as sometimes happens, by a judge of this court assisted by the bankruptcy judge. I will say since nobody else has said it, for some reason it has been overlooked, Section 157(D) requires withdrawal for a matter that involves consideration of a federal statute governing interstate commerce and the Constitution is not such a thing. The constitutional issues are no basis whatsoever for withdrawal.

However, as I say, it doesn't matter to us what judge hears this provided it's heard tomorrow. Fiat is signed up for a deal through the 15th of June. It does not have a right to walk away in general until the 15th of June but every single day that goes by hurts the ongoing enterprise. It will hurt the owners of the new enterprise. It will hurt the UAW, the VEBA, the Treasury, and it will hurt Fiat. Every single day, as you have heard, the plants are idle. There are no parts being purchased from any of the suppliers.

THE COURT: I understand that. I want to ask you: Is Fiat satisfied that the arrangements with the UAW and the funds is in satisfactory shape so that the company can be profitable?

MR. LACY: It's absolutely satisfied with that.

THE COURT: I understand your point. I am going to

finish up with anybody else who wishes to speak.

Thank you very much.

MR. EDELMAN: Good afternoon, your Honor. My name is Michael Edelman of Vedder Price. We represent Export Development Canada.

EDC is a lender here that has provided over $1 billion of debtor-in-possession loans. In addition, you have asked before earlier in this hearing, we are also providing funding for some of the new Chrysler entities after the sale. We support the positions of Chrysler, the agent or the senior secured lenders, the U.S. Treasury and the official committee, and Fiat in their opposition to the motion.

The minority lenders arguments to withdraw the reference on the sale motion and other matters is based upon an allegation that the matters being decided are dependent upon substantial and material considerations of nonbankruptcy law. Under Second Circuit directives this determination of the substantial material considerations is to be determined narrowly.

Contrary to the contentions of the minority lenders, there is no requirement, there is no substantial or material considerations of nonbankruptcy law that is required in these cases. The matters before the bankruptcy court are typical bankruptcy matters. These are, as we heard before, sale motions, motions regarding distribution of assets, issues

regarding priority, whether or not assets are to be sold free and clear. whether a trustee should be appointed. Each of these are fundamental Bankruptcy Code matters and are decided by the bankruptcy court and are not the basis for withdrawal of the reference.

So we think that the issues raised by what I call the minority lenders, because they do only hold $42.5 million of a $6.9 billion facility, that all these arguments are red herrings to try to insert an aura of nonbankruptcy federal law. But all you have to do is look at what is being cited by bankruptcy to know otherwise.

To start the normal bankruptcy process they are alleging allegations about TARP and EESA and none of that has anything to do with what is happening with the sale or their new motions for a trustee to be appointed. In fact, what they are really arguing about is that the source of funding that has been provided by the other lender here, the U.S. government, was inappropriate, but as we have already heard that funding has occurred. Much of that funding occurred in January and debtor-in-possession loans were approved and we haven't heard that they admitted that none of these TARP or EESA issues were raised in the hearing regarding the debtor-in-possession financing.

So even if they are right that there are issues here regarding TARP or EESA and that the co-lender here made loans

that are inappropriate, that has nothing to do with the matters currently before the bankruptcy court. We think that the fallacy of their arguments are highlighted by the fact that they completely ignore that Export Development Canada has provided over $1 billion of financing during these cases alone and several more billion outside of these cases. So our involvement here is an inconvenient truth for the minority lenders.

THE COURT: I think I heard this earlier, but will Canada provide any cash in the new transaction?

MR. EDELMAN: That is actually part of the bankruptcy courts. We have committed to make financing for a subsidiary of the Newco Chrysler, so, yes, we are committed to make financing going forward.

THE COURT: In Canada?

MR. EDELMAN: In Canada, but that is a wholly-owned subsidiary of the Newco being created.

THE COURT: Can you estimate what that amount of money would be? Maybe you can't.

MR. EDELMAN: I can. It's actually in the term sheet. I think it's $928 million in U.S. dollars, in excess of $1 billion Canadian using the exchange rate.

THE COURT: I am going to have to let you go. You are making a good statement but I think we need to wind our hearing up.

MR. EDELMAN: Thank you, your Honor. We would like to repeat, we ask the motions be be denied.

THE COURT: Any rebuttal, Mr. Kurtz?

MR. KURTZ: Thank you, your Honor. I will try to be brief.

THE COURT: Your people bought the bonds for what?

MR. KURTZ: 43 cents.

THE COURT: Go ahead please.

MR. KURTZ: Let me try to reach a couple of these issues. The first I want to talk about is I feel I need to reiterate we are here on a venue motion. I heard a lot of opposition, the vast majority of which was directed to whether the sale should be approved or not and all we are asking is that we get a hearing in district court on the TARP issue. This court recognized and noted the need to have a real full, complete record and an exposition on these important issues which are being followed publicly and have extremely important ramifications.

THE COURT: Let me interrupt you to say that I am fully cognizant that I am not today deciding the merits of objections. There are two things I want to learn about and that is what are the issues, but I am not resolving those issues. And what has become very apparent to me is there are issues of law and there are issues of fact. But that has been from my standpoint the purpose of what has certainly been an

extensive inquiry. Also, we get a feel of the contention of the other side of what is at stake if the process that is now going on is interfered with. What I want to say is under no circumstances am I deciding the issues on the merits.

Go ahead.

MR. KURTZ: Thank you, your Honor.

I would just at least emphasize that the exposition that would be appropriate here and that your Honor recognized is obviously not going to take place if there is a sale hearing tomorrow where we don't even have an opportunity to digest what was learned today in depositions and the like.

THE COURT: What are you saying? If there was what?

MR. KURTZ: If the sale hearing takes place tomorrow it's very difficult to have a full record and an exposition, as your Honor indicated, because we are still just learning information from depositions from all the primary players in the first instance this afternoon. We have to digest that and try the case tomorrow before we would have any opportunity to come here, and in the absence of a withdrawal. So I am suggesting that while we won't get anywhere near harming any dates or June 15 or otherwise, your Honor, there is ample opportunity to have a sales motion heard here next week or any other time.

I will note, though, that this emphasis on taking an appeal is just wrong. It's not a defense to a motion to

withdraw the reference and it's not a substitute for having the federal issues interpreted by the correct court here in district court and, in fact, I submit it's actually strategic. And we have already seen here that if you file an appeal, if you make a motion for a stay on appeal, you may have a bond. They have already suggested the bond be $2 billion. They know that can't be posted by the Indiana pensioners and so the idea here would be if we can simply avoid a review in the first instance on these important federal laws before this court we will never have to have that review because nobody will be able to afford the bond that we will seek here. So I think the idea of an appeal --

THE COURT: I don't understand what point you are making now.

MR. KURTZ: The point I am making is everyone says let's just have this matter resolved in the first instance by the bankruptcy court instead of having the reference withdrawn and then they will just address the same issues on appeal. And what I am saying is if we come up on appeal they are going to demand a $2 billion bond that is already in their papers in opposition to motions we brought in this court and that is going to make it --

THE COURT: Somehow I didn't catch that.

MR. KURTZ: It's in all the state papers.

THE COURT: They say they want a $2 billion bond?

MR. KURTZ: Correct.
THE COURT: Posted for an appeal from the bankruptcy judge?
MR. KURTZ: Correct, Judge. That is exactly what they will do. That is a standard tactic in bankruptcy court.
THE COURT: Is it standard to demand such a bond?
MR. KURTZ: I think what we will end up with is we have an automatic ten-day sale for a 363 sale and there has been a request to shorten that. We won't have ten days for appeal. I suspect that probably it will be shortened and we have to come up for a stay and on the stay they will say we have to get a bond to get a stay. If you don't get the appeal heard in a day-shortened period of time, something less, they will say they are moot, and there are cases out there that say it's true. The sale is consummated, objections are mooted, and there is never a review of these important issues.
So that is where they are heading with all of this and that is another reason we have to withdraw the reference.
Your Honor, in terms of the actual legal standards on withdrawing the reference, mostly what I have heard is somehow it's not essential and there are bankruptcy law issues. We certainly do not dispute, and I hope the fact there are important bankruptcy law issues, which are problematic here, but the TARP issue is the subject of this motion and ignoring it doesn't make it go away. It is essential. It is

dispositive. If we are correct, and I have seen no defense at all to whether we are or not, it is clear that the government cannot use the TARP funds as they propose to do to finance the sale. There is no sale. And the fact that Canada has some money in the game is of no relevance because they don't have enough in to finance the 363 sale. So, in fact, there will never be a need to reach any of the bankruptcy law issues in this case if we are correct. That is why you have a statute for bringing before a district court matters that will impact the bankruptcy motion that is being withdrawn, your Honor, and not only will it impact it it will resolve it. If Treasury can't take over Chrysler and form what they have done here and if they can't finance the sale the sale goes away, the security interests stay in place.

On the take-over of Chrysler, there is a lot of sort of talking around the edges here but in fact the testimony has already been that the government handled all the negotiations with the union and the VEBA for the 55 percent interest. The CFO of Chrysler couldn't even tell us what the negotiations were and how the amounts were determined and said he read about the deal when he opened up the Wall Street Journal. There is no dispute that the government handled --

THE COURT: Look, I am convinced that the issues that you raise are issues. What I have heard about is that there are other sides and that so often happens, but you don't have

to spend much time convincing me that there are issues because that has been abundantly demonstrated on the floor today.

I think I am going to have to ask that we conclude this.

MR. KURTZ: I would make one more statement because I think it's important.

There have actually been conflicting statements but the government says we made that TARP argument before Judge Gonzalez and he overruled it. That is just not true. We have never made this argument. I was in court. I know what we argued and what we didn't argue and it hasn't been raised. It hasn't been approved. Incidentally the creditors committee, who, by the way, supports the deal because they are getting in most instances full recovery where the secureds are getting 29 cents, actually said this hasn't been raised. That can be determined on the papers, but I can assure the court that we have not briefed this issue before right now.

THE COURT: Thank you.

MR. KURTZ: I am sure we made this clear earlier but if your Honor does need time to reach a ruling on this, then we would have to address the stake because the sales are otherwise going forward tomorrow morning.

THE COURT: Thank you.

My intention is to announce right now how I am ruling on the motions.

I will return to my office and prepare a brief decision, and whatever can be written by 4 o'clock can be written, and whatever can't be written by 4 o'clock will not be written. I think that time is of the essence and that is the way I have approached this.

The matter came to me last Wednesday. The case was assigned to Judge Preska but Judge Preska is away this week so it was referred to me by Judge Preska since I am the Part 1 judge this week. But it was my plan to have a very prompt hearing and to have the matter disposed of before tomorrow so there wouldn't be a need for a stay and there wouldn't be any delay at all, whichever way I decided. And with that in mind I will confess I worked through the weekend on the papers. I was certainly happy to do that. But I am simply saying that to illustrate that there can be prompt movement by the courts.

Now, the motion to withdraw the reference is a serious motion but I am denying it. And I will not go into any reasons. They will be stated in whatever I can write between now and 4 o'clock, maybe a little after 4.

The motion for a stay is academic and the motion for the appointment of a trustee and an examiner will remain with the bankruptcy court and will not be decided by me because I am not withdrawing the reference.

Now, I want to say something about what happens in this court as the case moves on. The issues about the sale,

and so forth, will be decided by the bankruptcy judge. It is my understanding that any party who feels aggrieved by the decision of the bankruptcy judge has a right of appeal to the district court.

Now, I don't know whether there is anything to be said about this but I want to say to all parties there should be a fair opportunity to appeal. I am not keeping the case now but I am fully aware of the need for a right of appeal after the bankruptcy judge does his work, and the various parties who have opposed the motion to withdraw the reference have relied to some extent on the fact that there is a right of appeal.

Now, I hope I do not hear of any attempts to obstruct that right of appeal or make it unduly difficult because of some inappropriate request for some exorbitant bond. The people opposing the withdrawal of the reference have relied on that right of appeal and that right of appeal should exist and it should be able to be exercised without any hindrance.

We will adjourn now and I hope to have a written decision out by 4 or as soon thereafter as I can possibly do it.

Thank you.

MR. KURTZ: Thank you, Judge.

MR. CULLEN: Thank you, Judge.

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